



# HISTORY OF AMERICAN POLITICAL THOUGHT



# THE CENTURY POLITICAL SCIENCE SERIES

EDITED BY FREDERIC A. OGG, *University of Wisconsin*

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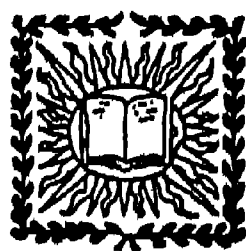
*March, 1929*

# HISTORY OF AMERICAN POLITICAL THOUGHT

BY

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NEW YORK & LONDON

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## PREFACE

This volume is an attempt to outline the general nature and evolution of American political thought. Beginning with the controversies of the colonial period and of the American Revolution, it includes the ideas held in America concerning the nature of the American governmental system, the issues that have been dominant in American politics and foreign policy, and the main movements of reform. Certain phases of American history and certain features of American political institutions are discussed in order to make the corresponding theories more intelligible. An effort has been made to present fairly the point of view of both sides in controversial questions. Attention has been given to the opinions of statesmen, to the doctrines of academic publicists, and to the more vague and indefinite currents of public opinion that are expressed in various ways.

The treatment in general is chronological, though certain phases of recent developments are discussed topically. The source material appears in the form of foot-notes. Secondary references are added at the end of each chapter. Valuable assistance in the verification of references and in the preparation of the index was given by the author's students, Mr. John Harrell and Mr. Alfred Reynolds.

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Berkeley, California.



# CONTENTS

CHAPTER	PAGE
I INTRODUCTION TO AMERICAN POLITICAL THOUGHT . . . . .	3
1 Nature of American Political Thought . . . . .	3
2 Tendencies in American Political Thought . . . . .	11
3 Sources of American Political Thought . . . . .	21
II EUROPEAN BACKGROUND OF AMERICAN POLITICAL THOUGHT . .	25
1 Importance of the European Background . . . . .	25
2 International Conditions . . . . .	26
3 Economic Conditions . . . . .	31
4 Political Conditions in England . . . . .	35
5 Religious Conditions in England . . . . .	38
6 Development of Political Theory . . . . .	42
III COLONIAL POLITICAL THOUGHT . . . . .	52
1 Church and State in the Colonies . . . . .	52
2 Political Institutions in the Colonies . . . . .	58
3 Political Theory in the Colonies . . . . .	67
IV POLITICAL THOUGHT OF THE AMERICAN REVOLUTION . . . . .	76
1 Nature of the American Revolution . . . . .	76
2 Political Theory of the American Revolution . . . . .	82
3 Establishment of State Governments . . . . .	99
4 The Growth of Union . . . . .	104
5 Beginnings of American Foreign Policy . . . . .	112
V THE CREATION OF THE CONSTITUTION . . . . .	119
1 Background of the Constitution . . . . .	119
2 Compromises in the Constitution . . . . .	123
3 Ratification of the Constitution . . . . .	129
4 Political Theory of the Constitution . . . . .	134
VI POLITICAL THOUGHT OF THE PERIOD OF FEDERALIST SUPREMACY	142
1 General Nature of the Federalist Period . . . . .	142
2 Beginnings of Political Parties . . . . .	148
3 Beginnings of the Slavery Controversy . . . . .	157
4 Political Theory of the Federalists . . . . .	160
5 Foreign Policy During the Period of Federalist Supremacy	172
6 Downfall of the Federalists . . . . .	179

CHAPTER		PAGE
VII	POLITICAL THOUGHT OF THE PERIOD OF REPUBLICAN SUPREMACY	187
	1 General Nature of the Republican Period . . . . .	187
	2 Political Theory of the Republicans . . . . .	194
	3 Constitutional Interpretation by the Supreme Court . . .	204
	4 Growth of Nationalism and Sectionalism . . . . .	213
	5 Foreign Policy During the Republican Period . . . . .	224
VIII	POLITICAL THOUGHT OF THE PERIOD OF DEMOCRATIC SUPREMACY	239
	1 General Nature of the Democratic Period . . . . .	239
	2 Growth of Parties and Party Organization . . . . .	245
	3 Increase in Executive Power . . . . .	253
	4 Decline in Importance of the Supreme Court . . . . .	259
	5 Politico-economic Controversies . . . . .	263
IX	POLITICAL THEORY OF SLAVERY AND STATES' RIGHTS . . . . .	279
	1 Political Theory of Slavery . . . . .	279
	2 Congressional Policy Regarding Slavery . . . . .	285
	3 Theory of the Relation of the States to the Union . . . .	291
X	POLITICAL THEORY OF TERRITORIAL EXPANSION . . . . .	313
	1 Manifest Destiny . . . . .	313
	2 Foreign Policy During the Democratic Period . . . . .	321
XI	POLITICAL THOUGHT OF THE CIVIL WAR PERIOD . . . . .	332
	1 Final Period of the Slavery Controversy . . . . .	332
	2 Formation of New Parties . . . . .	341
	3 Political Theory of Secession . . . . .	347
	4 Governmental Policy During the War . . . . .	357
	5 Foreign Policy During the Civil War Period . . . . .	367
XII	POLITICAL THOUGHT OF THE PERIOD OF RECONSTRUCTION . . . .	376
	1 Political Theory of Reconstruction . . . . .	376
	2 Civil War Amendments . . . . .	389
	3 Theory of the Union After the Civil War . . . . .	397
XIII	NEW ISSUES AFTER THE CIVIL WAR . . . . .	413
	1 Politico-economic Theories . . . . .	413
	2 Party Development, 1865-1897 . . . . .	426
	3 Foreign Policy, 1877-1897 . . . . .	441
XIV	POLITICAL ISSUES AND DEVELOPMENT IN THE TWENTIETH CEN- TURY . . . . .	451
	1 Political Issues, 1897-1925 . . . . .	451
	2 Reform in Party Organization and Methods . . . . .	479
XV	FOREIGN POLICY AFTER 1898 . . . . .	493
	1 Expansion in the Caribbean and Pacific Areas . . . . .	493
	2 Relations with the Orient . . . . .	509
	3 Intervention in Europe . . . . .	517
	4 Theories of Pacifism, Militarism, and Internationalism . .	527

# CONTENTS

ix

CHAPTER	PAGE
XVI THEORIES OF GOVERNMENTAL ORGANIZATION . . . . .	536
1 Composition and Powers of the Electorate . . . . .	536
2 Powers and Relations of the Legislature and the Executive	549
3 Judicial Organization and Powers . . . . .	555
XVII THEORIES OF GOVERNMENTAL FUNCTIONS . . . . .	568
1 Theories of Individualism . . . . .	568
2 Theories of Governmental Regulation . . . . .	571
3 Theories of Socialism . . . . .	575
4 Theories of Anarchism and Syndicalism . . . . .	584
XVIII POLITICAL THEORY OF MUNICIPAL GOVERNMENT . . . . .	590
1 Growth of American Cities . . . . .	590
2 Relation of City to State . . . . .	594
3 Forms of City Government . . . . .	601
XIX NEW INFLUENCES ON AMERICAN POLITICAL THOUGHT . . . .	609
INDEX . . . . .	623





HISTORY OF AMERICAN  
POLITICAL THOUGHT



# HISTORY OF AMERICAN POLITICAL THOUGHT

## CHAPTER I

### INTRODUCTION TO AMERICAN POLITICAL THOUGHT

#### 1. NATURE OF AMERICAN POLITICAL THOUGHT

The American governmental system, in its organization and in its policies, has been based to a relatively small degree upon abstract and philosophical political speculation. Like the Romans in ancient times, and like the English, from whom our political ideas were originally derived, the Americans have been influenced far more by practical considerations and have shaped their policies to meet actual conditions, rather than to correspond with *a priori* deductions of political doctrine. Impractical ideals have seldom received wide acceptance in America, nor have Americans been particularly concerned with logical consistency in their political principles. In many respects Americans have not attempted to work out a comprehensive philosophy of politics, nor to formulate definitely their national policy in domestic or in foreign affairs. Conditions have been met as the need arose; and political theory has usually been able to adjust itself to changing conditions without serious intellectual discomfort, and to state its principles to justify the accomplished fact.

The conditions of American life encouraged an easy and irresponsible optimism. The New World was free from the problems of transition and readjustment that followed from the breaking up of feudal life and medieval conditions in the Old World. Cut off from Europe by the broad barrier of the Atlantic, the Americans could safely experiment with political and social ideals. The absence of strong neighbors freed the United States from the constant fear for national security that haunted Europe, and for a long time interest in world affairs was slight. The continental

#### 4 HISTORY OF AMERICAN POLITICAL THOUGHT

dimensions and the abundant natural resources of the country assured economic opportunity and prosperity. The majority of American settlers brought with them an attitude of revolt against the old order in church and state. It was natural that Americans should view their land as the land of promise and should look forward to the future with hopeful, if somewhat thoughtless, confidence. American political ideals have always combined a loyalty to historical tradition and precedent with a vision of national opportunity and progress. The Land of Democracy has always appealed to its inhabitants as a land of unlimited possibilities and of glorious national destiny.<sup>1</sup>

This does not mean that political speculation has been absent in America. There is to-day a tendency to explain historical development in terms of natural influences. The economic specialist and the geographic historian point out the importance of economic interests and of the physical environment in determining political action. No one denies the value of their contribution. But it is also true that emotions, sentiments, and ideals affect human conduct, and that influences of an intellectual and spiritual character have been potent factors in animating our national policies and directing our national destiny. Certain fundamental ideals were generally accepted when the United States was created, and many of these have survived to the present day, being considered axiomatic, and seldom being examined or questioned. As examples, the general belief in a republican form of government, the doctrine that the people possess ultimate sovereignty, the idea that a written constitution containing a bill of rights is essential, and that a federal form of government is best suited to the diverse interests of our country may be mentioned. Some of the most conspicuous features of the American political system, such as the separation of church and state, and the all-pervading democratic influence, have been little discussed. In our foreign policy, the principles embodied in the Monroe Doctrine, though considerably expanded and modified in detail, have been an accepted part of our national thought for a century.

The greater part of American political theory arose in connection with specific issues and controversies. Discussion of political principles accompanied the American Revolution, the contest

<sup>1</sup>H. G. Wells, *The Future in America* (1906); H. Croly, *The Promise of American Life* (1909); H. Münsterberg, *The Americans* (1904). For an early statement of this point of view, see H. St.-J. de Crèvecoeur, *Letters of an American Farmer* (1782).

between the commercial and the agrarian interests (and, later, between the aristocratic East and the democratic West), the slavery question, the contest between the states and the nation, the territorial and colonial expansion of the United States, and the rise of the United States to prominence in world politics. However, these issues were discussed mainly in their legal and constitutional aspects, rather than from the point of view of a general political philosophy. Ideals have always played an important part in connection with American wars. In a democracy it is especially important, in order to arouse popular enthusiasm and support, to create the belief that war is being waged to right wrongs or to further some ethical end. The political and economic motives involved are not easily understood by the mass of the population, but moral issues make a wide appeal.

At a given time, certain principles seem to be so unquestioned and so unanimously accepted that they may be said to represent the national thought of the time. On other issues opinion will be divided, and discussion will be keen, or even bitter. Such topics form the issues of the period and furnish the motive forces in practical politics and in international relations. The doctrines which seem established at one period may be questioned later and may become subjects of controversy. On the other hand, the disputed issues of one period often lead to the general acceptance of one point of view or to an amicable compromise, and cease to be troublesome in political thought. The colonial controversies over the proper relation of church to state no longer disturb the minds of either churchmen or statesmen. The slavery issue has been definitely settled, and the doctrine of state sovereignty has been generally abandoned. But the policy of the United States in foreign affairs, for a long time considered to be properly that of isolation, is now being reconsidered in the light of our present position in world affairs. Likewise, judicial power and procedure, for a long time considered the most satisfactory part of the American system, has recently been subjected to considerable adverse criticism. There is also a tendency to reopen the question of whether democracy is possible or desirable under present conditions; and this problem will be of considerable importance in the future.

Since political thought usually aims either to support or to ~~attack~~ existing political institutions and methods, it may be classified broadly as either conservative or critical. Theories of the conservative type arise from the attempts of men to explain and justify

## 6 HISTORY OF AMERICAN POLITICAL THOUGHT

the political system under which they live, and to maintain the status quo. Such theories are usually created or supported by the class in power or by those who benefit under the existing régime. They also represent the natural mental attitude of those who love law and order and dislike confusion and change. By the establishment of a widespread belief in the perfection of existing institutions, change is made more difficult; and because of the crystallization of political policies into dogmas or shibboleths, such policies often receive uncritical support because, by constant repetition, certain slogans become embodied in the national tradition. Those who hold conservative theories view changing conditions with emotions ranging from regret to alarm. When their theory is no longer applicable, they often picture a golden age in the past, believe that the country is going to ruin, and long to return to the good old days. In this form, conservative theories become reactionary and usually disappear, often dying hard in their last efforts to resist inevitable change. The doctrines of natural aristocracy held by some of the early Fathers, and those of the divine intention that negroes should be slaves, and of laissez-faire as applied to large economic interests are examples of conservative theories.

Critical theories arise in opposition to the status quo and support efforts to change existing political institutions and methods. Such theories range from utopian ideals that have little connection with actual life, and no likelihood of practical application, to the concrete proposals of reformers who aim to remedy certain evils or to accomplish desired reconstruction. These latter vary from attempts to change some single device of organization, or to make minor readjustments in governmental activities, to wide-sweeping schemes of political reorganization, or the creation of new political systems. Some of their advocates are willing to work slowly and through legal channels; others believe in immediate and revolutionary methods. Liberal theories thus shade off into various degrees of radicalism. Such theories are usually held by those who are not in power, who are not prosperous and happy under the existing régime, and who hope to better their condition by change.

Critical theories are usually held by minority groups or by the party out of power, and are often abandoned when the group comes into a position of responsibility and control. In such a case the group is often forced to adopt the point of view which it formerly opposed, while the group which has lost control often finds it ex-

pedient for political reasons to adopt an attitude of criticism and to support the very doctrines which were formerly held by its opponents. During the first half-century of our national life, the doctrine of States' rights was the natural weapon of the minority group and was used to attack the expanding authority of the national government, controlled by the party in power. Practically every section of the country, at some time or other, or on some issue or other, upheld the principle of State sovereignty. In 1798 the Kentucky and Virginia Resolutions argued that the states were sovereign and had the right to nullify acts of Congress. In 1814 and 1815 it was New England which, at the Hartford convention, enunciated doctrines of State sovereignty. In 1861 the Southern states put the theory into practice by secession.

It is interesting to note that, when a critical theory is generally accepted and becomes successful in practice, it tends to become a conservative theory, making certain concessions to practical necessity, but endeavoring to maintain what it has accomplished and to prevent further change. The critical doctrines of one period frequently become the conservative doctrines of a later period. Natural rights and individualism were critical theories in the eighteenth century, in opposition to the paternalistic monarchies of that period. In the latter part of the nineteenth century they had become the conservative doctrines of a considerable element which opposed the expansion of governmental authority urged by the supporters of state socialism. Modern radicalism favors extensive governmental interference and control; earlier radicalism believed in a minimum of government. The change from royal to popular sovereignty changed the attitude toward government from one of fear and distrust to one of confidence and dependence.

The history of American political thought is filled with examples of reform movements, usually of a democratic or humanitarian nature. It was natural that liberal doctrines should arise and flourish in America.<sup>2</sup> The period of colonization brought to the New World the radicals and dissenters of that period; immigration added large numbers of restless and rebellious settlers; and our westward expansion carried the adventurous and dissatisfied into the new areas. Until the rise of the discontented laboring class of the industrial cities, radical ideas usually came from the western frontier. On the other hand, the free land, the boundless resources, the general prosperity, and the equality of oppor-

<sup>2</sup> A. M. Schlesinger, *New Viewpoints in American History* (1922), Ch. V.



## 8 HISTORY OF AMERICAN POLITICAL THOUGHT

tunity in America prevented extreme radical doctrines from receiving wide acceptance. Progress along liberal lines has been gradual and has usually followed legal methods. The American political system is so entangled in a network of legal conditions that the first question asked of any important legislative innovation concerns its constitutionality. The question of its wisdom or desirability is necessarily subordinate to legal considerations, and lawyers and judges have seldom been radical reformers.

Reform movements developed through definite stages. At first a small group of agitators, often including what President Roosevelt called a "lunatic fringe," carried on a violent and sensational propaganda for reform. After a time, some of its doctrines, at first considered dangerous, enlisted the support of practical politicians, who possessed the knowledge of political strategy necessary to put them into operation. In this process the original doctrines were usually somewhat moderated. Finally, the new doctrines, having shown their utility or their harmlessness, became accepted as part of the national tradition, and their origin as radical reforms was often forgotten. The struggles for religious liberty, public education, woman's suffrage, reduction in working hours, governmental protection of public health, the abolition of the saloon, and many other movements have gone through these stages.

In the more purely political field, the struggle for independence, democracy, and party reform has been the work of succeeding generations who desired to bring political institutions into accord with changing social and economic conditions. The American Revolution was the work of a group of agitators, led by James Otis, Patrick Henry, Samuel Adams, and Thomas Paine. They sought radical reform and used sensational methods and mob violence to awaken colonial public opinion. Since this group lacked the constructive genius to establish union and stable government, a conservative reaction, led by Washington, Hamilton, John Adams, and Jay, created the American constitutional system, adopting, however, many of the liberal ideas of the earlier group. Almost immediately another group of radical reformers, led by Jefferson, Madison, Burr, Duane, and Freneau, demanded further decentralization and popular control, and used again the methods of the agitator and the demagogue. When this group came into power after 1800, its doctrines were sobered by responsibility, but marked a decided advance in the direction of democracy. Growing discontent, especially with the pacifist foreign policy of the older states-

men, brought a new group of young nationalist leaders into prominence. Clay, Calhoun, and other War Hawks brought about the War of 1812, and embarked upon an extensive program of national legislation for internal improvements, a national bank, a protective tariff, and military preparedness.

In a short time a new radical movement insisted upon increased popular control of the government and the abolition of special privileges. Jackson, Benton, and Van Buren represented the aspirations of the Western settlers, demanding a wider democracy, the destruction of the powerful national bank, and the distribution of the Western lands. They desired to place the common people in control of all departments of the government. Meantime, a new group of radical agitators was attacking the problem of slavery, which the older statesmen had carefully avoided. Garrison, Giddings, and Wendell Phillips again used the methods of emotional propaganda to arouse the national conscience. While the pro-slavery group, led by Polk, Douglas, Jefferson Davis, and Alexander Stephens, was successful in acquiring slave territory at the expense of Mexico, enacting a strict fugitive slave law, and extending slavery to the territories, the agitation of the abolitionists bore fruit, and liberal statesmen, such as Chase, Seward, and Lincoln, took up the question in a more moderate and rational way. After the Civil War the anti-slavery radicals again secured control and carried through their program of reconstruction under the leadership of Thaddeus Stevens and Sumner. Applying doctrinaire principles, they conferred upon the freed slaves full privileges of citizenship and suffrage.

After the issues of the Civil War died down, the government was controlled by a group interested in economic prosperity and governmental aid to and protection of business. It believed in strong party organization and regularity. Blaine, Conkling, Hanna, McKinley, and Reed were among the outstanding figures of this era. During this period industrial development was rapid, and centralization was marked in both government and business. A new note of protest was soon heard. Radical minor parties were organized, and agrarian and labor discontent began to affect politics. The Populist and Free Silver movements represented the new radicalism. By the close of the century, the "muck-rakers" were active in exposing political corruption and the improper connection between government and big business. Liberal leaders, such as Bryan, Roosevelt, Wilson, LaFollette, Hughes, and Hiram John-

## 10 HISTORY OF AMERICAN POLITICAL THOUGHT

son, demanded progressive legislation to curb the trusts and to improve the conditions of the workers. Wider democracy was demanded through woman's suffrage, direct election of senators, direct primaries, and the initiative, referendum, and recall. In spite of the opposition of the survivors of the older régime, the new movement was in general successful.

At present, radical movements include the attack of the Socialists on the existing order, and the attempt to apply democratic principles to industrial organization. The World War gave a stimulus to liberal and optimistic doctrines concerning the future of democracy, world peace, and world organization. The recent effort to have the United States abolish its policy of isolation in world politics and to join in some form of world association represented a radical departure from our earlier policy. The failure of the United States to enter the League of Nations was due in part to a conservative reaction that set in after the World War. This reaction has also been marked by an attack on democracy and by a demand for efficiency, rather than for popular control, in government.

A broad survey of American political evolution shows alternating periods of radicalism and conservatism, with leadership usually in the moderates of one or the other group. The former have emphasized democratic and humanitarian ideals; the latter have stressed efficient government and economic prosperity. Both have contributed to American development, and both have usually followed opportunist and practical methods rather than preconceived and abstract theories. The statesmen who have been most successful in understanding and interpreting public opinion, in anticipating the needs of a new time, and in presenting new visions of national opportunity in a way that would rally popular support have achieved national greatness.

Both conservative and critical theories have points of strength and weakness.<sup>3</sup> Conservative theories, valuable in maintaining public order and stability, frequently prevent or delay needed reform. Critical theories, necessary to prevent stagnation and to secure healthy political progress, frequently represent the panaceas of

<sup>3</sup> J. Dewey, "How Reaction Helps," *New Republic*, XXIV (1920), 21-22; H. J. Ford, "Radicalism in American Politics," *Yale Review*, IX (1920), 759-770; R. W. Emerson, "The Conservative," *Works*, I, (1883), 279-307; B. Matthews, "Reform and Reformers," in *The American of the Future* (1909); H. Croly, "Reform and the Reformers," in *The Promise of American Life* (1909), Ch. VI.

ignorant fanatics or lead to political chaos and anarchy. Both groups contain doctrinaires and dogmatists. The proper compromise between undesirable extremes of reaction and radicalism is difficult to discover and to maintain, and must be determined by the interplay of complex interests and ideals under existing conditions. In the middle zone, where moderate conservatives coöperate with liberal radicals, is the only true meeting of minds. In democratic countries, progress can be made, under proper legal safeguards, only by the union of these groups. The extreme wings of each group are often apostles of lawlessness. The reactionary frequently attempts corruption of the government; the radical leans to violence and disregard of the law.

A close relation usually exists between the political thought of any given time and the actual political conditions of the period. Ordinarily political theories reflect the ideals and interpret the motives that underlie actual political development. They indicate the conditions and the intellectual point of view of their era. Even the most imaginative utopians usually suggest the problems of their time, and picture an ideal world in which those problems have been successfully solved. At the same time, political theories also influence political development. Not only are they the outgrowth of actual conditions, but they, in turn, lead men to modify their political institutions. Sometimes theory has preceded, sometimes it has followed the corresponding institutions or activities. Political theories are thus both cause and effect. Changing conditions create new theories; those in turn influence actual political methods.

## 2. TENDENCIES IN AMERICAN POLITICAL THOUGHT

In the colonial period, American political thought was intimately associated with theology. The clergy were the leaders of public opinion, religious problems received much attention, and the most troublesome issue was that of the proper relation of church and state. With the approach of the American Revolution, legal and constitutional questions came into prominence. For almost a century political discussion in America was dominated by legalistic conceptions: first, in the relation to the mother country; then, in the attempts to form a union; later, in the relation of the states to the Union. The nature of the American constitutional system, the powers of the Supreme Court, the rights of nullification and secession, and the reconstruction after the Civil War were

## 12 HISTORY OF AMERICAN POLITICAL THOUGHT

discussed mainly as problems of legal interpretation. Interest centered in the form of government, and in the extension of democracy. Even during this period the problem of governmental functions began to be troublesome, and after the Civil War it became the chief issue. Attention was directed to the relation of government to business, labor, and public welfare. Social and economic interpretation of politics replaced the earlier legalistic view, and arguments based rather on expediency and ethics than on the letter of the Constitution found popular favor. Theology, law, and social economics, in turn, have been the chief influences on American political thought.

While American political thought has retained its original attitude on certain important questions, on others it has modified considerably its earlier position, and in some cases it has adopted the opposite attitude. The revolutionary doctrines of an original state of nature, natural rights, and social contract, while still holding a place in popular tradition, have been generally abandoned in scientific thought as explanations of political phenomena. The modern theory of the purpose of the state is decidedly different from that of the Fathers. The individualism of the eighteenth century, with its belief that government was a necessary evil the activities of which should be limited to the minimum, has been replaced by an enormous extension of government regulation and by a willingness to permit to the government a wide field of interference in the lives of individuals and a generous power in performing functions for the promotion of general welfare. The early theory of individualism was based on the prevalent belief in natural rights, with which the state must not interfere. To a large extent this point of view has been replaced by the utilitarian doctrine that the aim of the state should be to secure the greatest good of the greatest number. While the utilitarian principle was at first associated with free competition and enlightened selfishness, it was later applied to social-welfare reforms and to governmental regulation. Individualism was a protest against a monarchic government, which the people feared because they did not control it, and the activities of which, therefore, they wished to limit. When democracy was an accomplished fact, the people no longer feared the authority which they themselves controlled, but grew accustomed to appeal to it on all occasions when they needed protection or aid. Moreover, the idea of the greatest good of the greatest number seemed also to correspond to the democratic principle of majority rule.



Likewise, the early confidence in legislative bodies and the distrust of executive power has been replaced by a growing dependence upon the executive and by a corresponding loss of respect for popularly elected representative bodies. The present importance of the offices of President and Governor would have seemed most dangerous to the founders of the American Republic. The direct representative character given to the Presidency when the Electoral College came under the control of popular election gave to that office a firm foundation and strengthened all its functions. Possession of the Presidency became the object of party struggles. Early in our history the power of the President was realized. John Quincy Adams said: "It has perhaps never been duly remarked that, under the Constitution of the United States, the powers of the executive department, explicitly and emphatically concentrated in one person, are vastly more extensive and complicated than those of the legislative."<sup>4</sup> Again, the party system, viewed with dislike by the Fathers of the Constitution, who hoped that we should never have "factions" in America, has now become an accepted part of our governmental organization. Arising as voluntary associations, the parties have been incorporated into the legal organization of our constitutional system. As Woodrow Wilson said: "Whatever their faults and abuses, party machines are absolutely necessary under our existing electoral arrangements."<sup>5</sup>

There has also been a marked change in the type of men selected for the office of President. In the early period, the Presidents were drawn from the aristocratic classes of Virginia and New England. They were men of wealth, education, and previous training and experience in government. In the middle period, beginning with Jackson, the Presidents were usually self-made men of the people. Any suggestion of aristocratic connections or leanings was a distinct handicap, and the ablest statesmen of the period were not chosen to the office of chief executive. More recently our Presidents have shown some tendency to revert to the earlier type, at least to the extent that they have been men of education and of previous governmental experience. In the early period, the office of Secretary of State was the best stepping-stone to the Presidency. At present the leading candidates are usually those who have made successful records as governors of important states. Every war waged by the United States, with the exception of the World

<sup>4</sup>In his *Discourse on the Jubilee of the Constitution* (1839).

<sup>5</sup>*Constitutional Government in the United States* (1908), p. 208.

## 14 HISTORY OF AMERICAN POLITICAL THOUGHT

War, has given the United States a President. The political fortunes of Washington, Jackson, Taylor, Grant, and Roosevelt were furthered by their military achievements. Vice-Presidents, originally chosen with the idea of their possible succession to the Presidency, are now usually selected for political reasons, to add strength to the ticket by representing a certain section of the country or a certain wing of the party.

The most consistent general tendency in American political thought has been in the direction of democracy. In practical application this led to a widening of the suffrage, to an extension of the elective principle, and to an increase in the direct part of the voters in government and in the organization of the political parties. "It is evident that the Fathers were more democratic than the Puritans; the Jeffersonian democracy was more liberal than that of 1776; the Jacksonian democracy went far beyond the Jeffersonian school; the Abolitionists extended the boundary lines farther yet; and the advocates of women's suffrage have even surpassed this liberal provision. The political people were, roughly speaking, in the first stage the church members, in the next the freeholders, in the third place the white male citizens, in the fourth period all adult males, and now include the whole adult population."<sup>6</sup> The share of the electorate in government was extended by making elective many offices originally filled by appointment, or by making directly elective offices originally chosen by indirect election, by shortening the terms of office-holders, by the practice of rotation in office, by the change in the election of the President, in accordance with which he is in fact chosen by the party organization and the voters rather than by the Electoral College, by the general practice of popular ratification of state constitutions, and by the newer devices of initiative, referendum, and recall.

In recent years the theory of democracy has been criticized, and certain tendencies in the opposite direction have become apparent. To some extent this is due to the demand for efficiency in government, and to the belief that, with the increased size of the electorate and with increased complexity of modern life, democracy becomes incompetent, extravagant, and corrupt. The requirement of educational qualifications for voting, the civil service reform movement, the transfer of powers from legislatures to boards and commissions, the short-ballot movement, the city manager form

<sup>6</sup>C. E. Merriam, *American Political Theories* (1903), p. 342.

of municipal government, and the increased use of experts in many fields are examples of the growing belief in efficient government, even though it requires limitations on democratic control. To some extent the anti-democratic tendency is the result of the concentration of wealth which has broken down the economic basis of equality. In so far as political authority accompanies economic strength, the undemocratic organization of industry has created a powerful group which is in a position to control or to influence the government to a considerable degree.

The great wave of immigration from Southeastern Europe, which began in the latter part of the nineteenth century, and which added to our electorate a large unassimilated element, led many to doubt the efficacy of democracy under such conditions. Likewise the acquisition of colonial dependencies, lying outside our geographical group, and held on terms of political inequality, compelled some reëxamination of the fundamental conceptions of our democracy. The anti-imperialists argued that the new venture meant a departure from the ideals of earlier days. More recently, the theory of democracy has been attacked on biological and psychological grounds. In pointing out the inherent differences in human beings, these sciences denied the doctrine of equality upon which democracy was based; and in emphasizing the part played by emotion, suggestion, and crowd psychology, they questioned the existence of a rational public opinion or general will. In general, American political theory has held democracy as an ideal which should, as far as possible, be realized. At the same time it has believed that liberty and rights are dependent upon political capacity, and that the practical applications of democracy are necessarily imperfect.

The earlier theory of separation of powers has also been subjected to criticism. In the eighteenth century it was held that governmental powers should be divided among legislative, executive, and judicial organs, and that these powers should be carefully separated and balanced, one against another. In this way the danger of concentrated authority would be avoided and liberty would be safeguarded. At present there is a distinct tendency to recognize two primary state functions: legislation, or the expression of the will of the state; and administration, or the execution of that will. There is also a tendency to consolidate and centralize the administrative agencies, and to make them responsible to the organs that formulate the policy of the state. This tendency is



most marked in the city-manager form of government. In the commission form of city government the old theory of separation of powers has been abandoned, the same body acting in both a legislative and an administrative capacity. Recent proposals to give members of the Cabinet seats in Congress look in the direction of coördination of legislative and administrative functions. Some recent writers frankly favor the English cabinet system of government as preferable to our presidential system. The tendency to recognize the party as a legal part of the governmental system also represents a departure from the earlier fear of centralized authority. Responsible and efficient government is emphasized to-day rather than decentralized and restricted government. The dangers of deadlock and friction, and the irresponsibility of a government excessively subject to checks and balances have frequently been apparent.

The doctrine of States' rights and the belief in local self-government have been weakened by a growing spirit of nationalism. The powers of the national government were broadly construed by the courts and were extended by recent amendments to the Constitution. Powerful social and economic forces worked in the direction of the national unit; and the tendency toward centralization in industry and in the political party led to a theory of national supremacy. Many questions formerly left to the states demanded uniformity of treatment, and the growth of interstate commerce demanded a uniform commercial code. The growing importance of foreign affairs also strengthened the national authority and the spirit of national patriotism. The great mass of immigrants thought in terms of the nation rather than of the state; and the acquisition of new territory, controlled at first by the federal authority and gradually admitted to the Union, added a large group of states that had no tradition of original sovereignty. The acquisition of colonial dependencies, wholly under federal control, also strengthened the national authority. Ideals of liberty and democracy, originally associated with local areas, were more and more interpreted in terms of the nation. In the cities alone, with their demands for municipal home rule, did the spirit of local autonomy increase.

The growing importance of women in American public life exerted an influence on political thought, especially in the direction of social interests. The care of children, defectives, and dependents; the development of public education; improvements in public recreation, sanitation, and housing; restriction of vice; pro-

hibition; and labor legislation for the protection of women and children were in large measure due to the organized efforts of women. The transformation of the United States from a rural, agricultural nation to an urban, industrial nation compelled many readjustments of political doctrine and created numerous and difficult problems. Ideals suited to village life were not applicable to conditions in large cities. The demand for efficiency in government, the willingness to extend governmental regulation, and the belief that the government should act positively to promote general welfare were in large measure due to the conditions of city life.

Economic influences have affected American political thought throughout our history. In the earlier period the contest was between the debtor and creditor classes, the agrarian and the commercial interests. In the middle period, two great economic systems divided the country into sections, North and South. More recently the industrial development of the country has emphasized the conflicting interests of capital and labor, and the contest between the Western farmers and the Eastern capitalists has been continued in the Populist movement and in the recent demands of the farm bloc. Questions such as the tariff, the banking system, the currency, shipping subsidies, and agrarian relief have been constantly troublesome. As to the relation of government to business, three theories were widely held. The conservative, individualistic doctrine favored the policy of *laissez-faire*: the government should permit the "natural laws" of trade to operate without interference. The liberal, or progressive, theory demanded public regulation to protect the workers and to check the monopoly features of the new industrialism. The radical, or Socialist, philosophy favored a policy of collectivist control and demanded economic democracy in the widest sense. The first theory was generally accepted in the earlier period of our history; the second came into power toward the close of the nineteenth century; the third has never received wide acceptance, although it has gained in strength in recent years as part of the general philosophy of socializing governmental action, and of expanding governmental powers.

The theory of our foreign policy has undergone a marked change, the former doctrine of isolation having been replaced by an extensive interest in world affairs. Foreign relations were important in the early period of our history. As English colonists the Americans were entangled in the long series of wars between England and France, wars on the Continent being echoed in

colonial wars in America. The history of the United States as a sovereign state began with a war by which it won its independence from England and in which it formed alliances with and borrowed money from European states. During the wars of the French Revolution, both England and France intrigued to secure the aid of the United States, and our attitude in the European contest was an issue in the party struggles between Federalists and Republicans. The Alien and Sedition Acts, the X.Y.Z. affair, the activities of the French agent, Citizen Genêt, the efforts of the United States to secure free navigation of the Mississippi River, the acquisition of Florida and Louisiana, and the interest of the United States in the efforts of the Holy Alliance to interfere in South America were all indications of the importance of foreign affairs in early American politics. Yankee-built sailing vessels carried a large part of the world's commerce, interference with which led to a second war with England in 1812. During this early period foreign relations were so important that the office of Secretary of State became the best stepping-stone to the Presidency.

This early interest in world politics was forced upon the United States: it was not of our seeking. The United States was a new and weak nation, not a world power. It lay on the outskirts of civilization, remote from the centers of world interest. Our policy aimed at resisting foreign aggression, not at asserting our position in world affairs. Americans thought of European diplomacy as dynastic bargainings in which we had much to lose and nothing to gain; and our early experience in international politics led to the belief that American interests demanded a policy of neutrality and isolation. Washington's Proclamation of Neutrality, his warning in his Farewell Address against permanent alliances, Jefferson's Embargo and his dislike of entangling alliances, and, finally, the Monroe Doctrine were the crystallization of American thought of this period. We had no desire to take active part in the affairs of the Old World nations, and we resented their intervention in our affairs or the further extension of their influence on the American continent. The establishment of a protective tariff, partly for the purpose of developing American manufactures so that we might be economically independent of Europe, represented another phase of the same view. The idea that we had institutions and interests distinct from those of Europe, that our geographical location was a fortunate advantage, and that a policy of isolation was to our interest became an accepted part of the political thought

of the day. "America for Americans" summed up the theory of the early period.

Until the close of the nineteenth century the policy of isolation was put into practice. Effort was directed toward the fulfilment of our "Manifest Destiny" by westward expansion into adjacent territory. Those were the days when Horace Greeley advised young men to "go West and grow up with the country," and our faces were turned away from the seaboard and the affairs of Europe. Our only foreign war was with Mexico, a neighboring American state. Aside from a few boundary controversies, and the difficulties, during the Civil War, with England over the Alabama Claims, and with France over the effort to establish Maximilian in Mexico, our relations with the great powers of Europe were unimportant. We did, however, take an active part in the opening up of China and Japan, thus laying the foundation for our interests in the Pacific area of world politics. American interest centered in domestic problems and American energy was devoted to the development of our resources, the building of railways, and the growth of industry and of cities. The decline of our merchant marine, as steel steamships replaced wooden sailing vessels, and as American capital sought more profitable investment in other lines, removed an important factor in world politics, and helped to explain our indifference toward the building of an effective navy.

Nevertheless, a number of influences were at work during this middle period preparing the way for the present position of the United States as a world power. Our rapid growth from a few million colonists scattered along the Atlantic coast to a vast people of one hundred millions, occupying a continental domain reaching from the Atlantic to the Pacific, made us in population and area one of the world's greatest states. Immigration from Europe swelled our population and laid the foundation for new ties with the Old World. The development of our resources changed the United States from a poor, rural, agricultural people to a rich, urban, industrial nation. The growth of our foreign commerce brought the United States into close relations with other states and made the policy of political isolation difficult in case anything threatened those interests. Our geographical isolation was diminished by improvements in transportation and communication. With the expansion of the United States to the Pacific, the opening up of the Orient, and the building of the Panama Canal, the United States, the only great nation facing both oceans, came to occupy a central

position of enormous strategic value for commercial and naval purposes. As American strength grew the Monroe Doctrine was expanded. Originally defensive and designed to prevent European aggression, it became increasingly imperialistic, and was used to justify American intervention. It was finally interpreted to mean, as Secretary of State Olney said, that the United States is virtually sovereign on the American continent, and it grew increasingly unpopular with the Latin-American states that had originally welcomed it.

The war with Spain in 1898 brought our isolation to an end. As a result of that war we became a colonial power with dependencies and protectorates scattered in various parts of the world, and occupied by peoples of alien race, speech, and religion. In 1901 the Insular Cases, which decided that the Constitution did not follow the flag, reversed our former policy of dealing with newly acquired territory, and drew a sharp distinction between the United States and its possessions. We began a new career of expansion and were drawn into the full current of world politics, to which colonial interests and the government of backward peoples lead. After the war with Spain the United States began to take active part in international conferences; and, in spite of earnest efforts to remain neutral, the United States was finally drawn into active participation in the World War. As in the Napoleonic period, we were forced to realize that, when the great powers are engaged in war, neutral rights are little regarded, and that the difficulty of maintaining neutrality increases in proportion to the extent of international interests.

At the close of the war the United States was one of the dominant powers at the Peace Conference in Paris, and took active part in the adjustment of European problems. International obligations began to attract popular attention to international guarantees of permanent peace. The League of Nations and the World Court became disputed issues in American politics; and the problem of "dollar diplomacy" in the Caribbean area aroused wide interest. The large loans made to the allies during the war, and the transformation of the United States from a debtor to a creditor nation also increased our interest in European politics. Our financial position makes us dominant in the economic councils of the world, and our foreign credits give us an interest in the nature and activities of the governments to which loans have been made. To such an extent is present-day politics tied up with business and



finance that a policy of political isolation becomes impossible in view of our actual economic situation.

The rise of the United States to the position of a world power has also reacted on our internal organization and policies. It has tended to increase the importance of the national government at the expense of the states, and to strengthen the executive rather than the legislative department. It has also opened up interesting questions concerning the relation of authority to freedom. To reach a satisfactory adjustment between democracy and world power is one of the most difficult tasks that the American people has yet faced.

### 3. SOURCES OF AMERICAN POLITICAL THOUGHT

To a considerable degree, American political thought was indigenous, growing out of the conditions and problems of the New World. On the other hand, the culture of many peoples was represented in America, and the quick interchange of ideas in the modern world enabled many doctrines that originated in other lands to influence the thought and institutions of the United States. In many cases it is difficult to trace the origin of American doctrines or the degree to which ideas that originated elsewhere have been modified by American conditions.

English principles and practices, though differing on important points from those in America, have been important since colonial times. The framers of the American system depended largely on the English political doctrines of the preceding century. Coke, Sidney, Locke, Harrington, and other writers of the English revolutionary period were the sources from which the Patriots derived their fundamental doctrines. Both England and the United States showed a tendency toward responsible democratic government, universal suffrage, and the two-party system. English law and judicial procedure, copied in their main outlines in America, formed a constant bond of unity. For a long time Blackstone was the bible of American lawyers, and the first comprehensive description of the American political system was written by an Englishman, James Bryce. The economic doctrines of Adam Smith and John Stuart Mill, the utilitarian ethics of Bentham, the doctrines of social and scientific evolution of Spencer and Darwin, and the analytic jurisprudence of Austin were quickly made current in America and exerted a powerful influence on the thought of their

period. Similarity of language gave the Americans access to English literature, and the writings of English social and political reformers were widely read in America from the days of Charles Dickens down to the recent work of G. B. Shaw and H. G. Wells. While American Socialism was mainly of German origin, the doctrines of the English Fabians and, more recently, of the Gild Socialists have received some acceptance in America. In labor organization, the American unions followed English, rather than Continental models. From the English dominions, especially Canada and Australia, the United States derived certain political tendencies, such as the Australian ballot, the initiative and referendum, proportional representation, and industrial arbitration.

French influence was most important in the period following the American Revolution. The agrarian doctrines of the Physiocrats appealed to one group of American thinkers, led by Franklin and Jefferson; and the separation-of-powers theory of Montesquieu received general acceptance. Many Americans sympathized with the revolutionary democracy of the French Revolution. In recent years American radical thought has been affected somewhat by the industrial unionism of the French Syndicalists, and American philosophical thought has been influenced by the doctrines of Bergson's *Creative Evolution*. Russian influence was exerted mainly through the anarchistic theories of Bakunin and Kropotkin, and the pacifist socialism of Tolstoi. The democratic nationalism of Mazzini in Italy gave a stimulus to nationalism in the United States; and in recent years the doctrines of Mussolini, with his attack on democracy and his emphasis on efficiency, have been much discussed in this country.

German influence was exerted through the idealistic philosophy of Hegel and his followers, who magnified the importance of the state, through the theory of state socialism of Karl Marx, and through the liberal nationalism of Francis Lieber. Many American students of the social sciences studied in Germany, were influenced by German political and economic doctrines, and introduced into America German methods of research. The German influence attacked the doctrine of social contract and natural rights, and substituted for it the idea of the state as a historical, evolutionary, organic growth. It tended to justify an expansion of governmental activity and to break down the earlier individualistic doctrines. It contributed to the theory of a strong, national state, exercising large powers of regulation, and engaging in the promotion of general welfare. In the field of municipal government, the experience

of the German cities was drawn upon, the recent movement toward the city-manager form showing marked resemblances to the German system. The cultures of many other peoples were mingled in America and formed a background for the development of American political ideas.

The content of American political thought may be discovered from various sources. Much is tacitly implied in our forms of political organization and in the practices and activities of our governmental organs. A large part of our fundamental political doctrine was crystallized in great documents, such as the Declaration of Independence and the federal and state constitutions. Statutes passed by legislative bodies and decisions rendered by the courts are indicative of the political point of view of their times. The messages of the Presidents, party platforms and campaign literature, and the speeches, writings, and biographies of men prominent in public life are valuable sources of material. Discussions in legislative bodies and in conventions suggest the controversial issues of the period. Treaties, diplomatic correspondence, and state papers indicate our foreign policy. The teaching and writing of learned students of history, economics, and government have considerably influenced our political ideas. Numerous organizations have been created for the purpose of furthering some definite governmental device or policy, and have carried on active propaganda to spread their ideas. Private interests frequently attempt to influence governmental policy or to create favorable public opinion by various forms of publicity. From pulpit and platform political doctrines are disseminated; and the influence of the press, in books, pamphlets, magazines, posters, cartoons, and the newspaper has been enormous in swaying the minds of the people. Finally, literature, in the narrower sense, often mirrors with great accuracy the political ideas of its time. This is especially true of the essay, poetry, fiction, and the drama. From these and many other sources the confused maze of political thought may be partially traversed.

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## 24 HISTORY OF AMERICAN POLITICAL THOUGHT

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## CHAPTER II

### EUROPEAN BACKGROUND OF AMERICAN POLITICAL THOUGHT

#### 1. IMPORTANCE OF THE EUROPEAN BACKGROUND

The discovery and settlement of the New World were results of European movements. The population that has been important in the history of America was originally almost entirely of European stock. Social and political institutions and ideas were transplanted from Europe to America. For a long time America existed as a group of colonies, influenced by the power and policy of the home governments in Europe. Even after independence, successive waves of immigration and numberless events in Europe had effects which were deeply felt in America. While people and institutions were modified by the material conditions in America, and while the influence of Europe became less as time passed, nevertheless the history of America in its beginnings was a branch of the history of Europe, and the political thought of the New World had its roots in Old World ideas and issues.

Spain, France, and the Netherlands had their separate influences on American history, but it was England from which the American nation really had its origin, of which it was for more than a century and half a dependency, and to whose institutions and traditions we must look for the origins of our own. Instead of an old civilization and submissive natives, England found in the New World a continent of virgin soil, sparsely settled by primitive peoples who preferred extermination to bondage. To this area were transplanted an English population and an English culture. Unlike the other empire builders of the period, the English founded a new nation, largely independent in government, and basically European in race stock. The course of events in England and the issues that were dominant in her political thought at the time of colonial settlement are therefore of especial importance.

Five phases of the European background exerted an important influence on the beginnings of political thought in the New World. These were: (1) The international situation—the rise of national

states and the contest between the leading colonial powers for dominance in America; (2) the economic situation—the commercial revolution, and the theories of Mercantilism, with their effect on the relation between the mother country and the colonies; (3) the political situation in England—the contest between King and Parliament and between the theories that were developed for the support of the two authorities; (4) the religious situation—the contest between Catholicism and Protestantism, and between the established church in England and the various dissenting sects; (5) the intellectual situation—the rise and diffusion of the new learning, the growth of natural science, and the mental ferment caused by new ideas in politics and in religion.

## 2. INTERNATIONAL CONDITIONS

Many factors, political, economic, and intellectual, combined to make the early period of the modern era an age of geographical discovery. The most important of these was the desire to find new routes from Europe to the Far East. Medieval Europe was dependent for her luxuries upon the Orient. Precious stones, fine fabrics, drugs, dyes, perfumes, and spices came by various long and tedious routes. Spices, especially pepper, cinnamon, and ginger, were in great demand to flavor the coarse food and monotonous diet of the times. The closing of the old routes to the East, by the conquests of the Ottoman Turks, had far-reaching results. The city republics of Italy, which had been the centers of European trade, lost their prosperity; the new nations on the Atlantic, which even before the closing of the old routes had cast envious eyes at the profits to be derived from Far Eastern commerce, came into prominence, each eager to find a new way to the East and to secure thereby a trade of great profit. "Search for trade led to discovery, discovery to exploration, exploration to permanent settlement, and settlement to the creation of a new center of commercial and political interest, and eventually to the rise of a new nation."<sup>1</sup> The first discoverers of America believed they had reached Asia. When they found that the new continent was not Asia, they were not exultant that they had discovered a new world, but disappointed that a barrier stretched between Europe and their eastern goal. For many years they made valiant efforts to discover a "northwest passage" through the new continent to Cathay and India.

<sup>1</sup> E. P. Cheyney, *European Background of American History* (1904), p. 40.

The most important political development at the beginning of the modern period was the formation of national states. In the middle ages, Europe was split up into many feudal principalities and free cities. While, in theory, the Holy Roman Empire claimed supremacy over all Christian rulers, and insisted that it was the heir of the Roman tradition, its practical significance was slight. The idea of uniting peoples of similar language and customs into strongly centralized states developed slowly, but by the time of the discovery of America, Spain, Portugal, France, and England had taken form. In each of these countries there existed a real nation, with a single monarch, and with a distinctive language. The feudal obligations of the nobles were replaced by money payments by which a national standing army could be maintained, and the local laws and jurisdictions were replaced by a uniform national law and by a centralized national government. With the formation of national states, the desire to increase the strength and importance of the state became the chief policy of their rulers. One way in which this could be done was to extend the territory and thereby increase the national income of the state. The discovery, exploration, and settlement of the New World was the work of the new national states of western Europe, and the struggle for colonial supremacy in North America was carried on among them.

The political authority of the church, dominant in the medieval period, was fast disappearing, and the way was being rapidly cleared for the modern idea of the sovereign state. Internally, the sovereignty of the state was vested in the monarch, or sovereign; externally it was manifested in international relations among the growing family of nations. By the end of the sixteenth century, Bodin had worked out his theory of state sovereignty, and the Spanish Jesuits and Grotius were laying the foundation of international law.

During the period of discovery and exploration, Spain was the most powerful state in Europe, and for over a century Spain and Portugal monopolized the New World. While in population and resources Spain was not as important as France, nevertheless the political unification carried out under Ferdinand and Isabella, the addition of the Hapsburg domain under Charles V, the great wealth which flowed to her from her colonies, and the prestige which attended her diplomacy and her armies exalted the Spanish monarchy to the first position in Europe. Few traces of Spanish political institutions and ideas survive in that part of America now included

in the United States, but the Latin-American republics retain many features of the Spanish system and the Spanish point of view.

During the sixteenth century, Spain and France were engaged in almost constant wars, but these contests, waged mainly over the Italian states, had little influence on America. With England the relations of Spain were more friendly during this period. Charles V and Henry VIII were in practical alliance until the dispute over the divorce of Henry from Catherine of Aragon created a break. Relations improved later, and with the accession of Mary, the cousin of Charles, to the English throne, cordial friendship was restored. However, the accession of Elizabeth, who refused to marry Philip and who declared herself a Protestant, made Spain the enemy of England, and the Spanish ruler proceeded to plot against her throne. Jesuits were subsidized to stir up sedition, Mary, Queen of Scots, was used as a center of conspiracies, and finally the Armada was prepared and sent against England. While the contest between Spain and England was part of the epic contest between Catholicism and Protestantism, it was also in large measure based on economic motives. English sailors and freebooters had taken the offensive against Spanish trade and commerce, and many treasure ships from the colonies had been seized and taken to English harbors. The failure of the Armada ruined the navy and commerce of Spain, gave England her first title to commercial supremacy, made it possible for the Netherlands to secure their independence, and marked the collapse of Spanish monopoly on the high seas and in the New World.

The decline of Spain was hastened by internal economic conditions. The cost of the extensive foreign undertakings fell with crushing burden upon the kingdom, the revenue from the American mines enriched private individuals rather than the treasury of the state. The large income from the Netherlands came to an end with their revolt, a heavy tax on sales paralyzed native industry, and the wealthy and industrious Moors and Jews were persecuted and exiled. By the close of the century Spain was on the verge of bankruptcy.

During the seventeenth century France succeeded to the position of preëminence in Europe which Spain had held in the sixteenth century. Except in England, monarchical power was gaining in strength. The kings were strengthening their position in their respective states and were eager to expand their territory and to add to their national wealth. Wars were waged for dynastic

reasons, and territories were bartered among the rulers regardless of the wishes of their populations. The Thirty Years' War (1618-1648), starting as a religious controversy, became increasingly political in its later stages, and marked the beginning of modern international relations. It gave a stimulus to the acceptance of definite principles of international law and of the usages of diplomacy. Permanent embassies were established in foreign countries, and a system of alliances and the idea of a "balance of power" became the cardinal principles in European foreign politics. The Italian idea of statecraft, as stated by Machiavelli, was accepted by the nations of Western Europe. From the Peace of Westphalia (1648) emerged the modern state-system, based on the theory of the essential equality of independent, sovereign states, though recognizing in practice the existence of great powers. The cruelty and destructiveness of the Thirty Years' War also emphasized the necessity of more humane practices and led to the formulation of rules of warfare. The opening up of the New World called attention to the problems of freedom of the seas, the relations of colonies and dependent peoples to the mother countries, and the methods by which territory could be acquired. The wars of the period led to discussions as to the just causes of war, the treatment of combatants and non-combatants, and the rights of neutrals. The Spanish jurists and Grotius laid the foundation of international law during this period, and in the Peace of Westphalia many of their doctrines were accepted by rulers and statesmen.

During the first half of the seventeenth century, France, England, and Holland began to colonize in America and to stake out their claims in the northern part of the New World. While the Dutch, with characteristic shrewdness, laid hold of Manhattan Island, the strategic point in the continent, they soon lost their American colony to the English (1664). The second half of the century was marked by the beginning of a long series of wars in which England and France were the chief contestants. These wars, directed against the ambitious designs of Louis XVI in Europe, spread to the French and English colonies in America; and a series of colonial wars, lasting from 1688 to 1763, drove out the French and left the English supreme in the eastern part of the continent. The French had at first the strategic advantage of control of the Mississippi Valley, the St. Lawrence Valley, and the Great Lakes, encircling the English colonies on the Atlantic Coast. They were also more united than the discordant English colonies,



and were more successful in securing the friendship and aid of the Indians. But the French did not colonize in large numbers, did not become permanent agricultural residents on the land, did not maintain the purity of their race and their institutions in contact with the natives, and were hampered by the paternalistic policy of the home government.

The English had a more powerful navy and a more prosperous trade, and, freed by their insular position from the necessity of maintaining a large army, were more easily able to bear the expenses of the wars than the French. Rivalries among the continental states served England's imperial fortune; and the flexible "balance of power" system worked out by English statesmen made for safety at home and for dominion abroad. Moreover, England had a strong middle class, able to furnish leadership and capital in colonial enterprise, and she had an abundance of men and women, accustomed to hard labor in the fields, yet free from bondage to the soil and able to migrate. International rivalry was an important motive in American colonization. Imperialists, interested in the new ventures, wished to found "a New Britain in another world," which would be a "bulwark of defence, in a place of advantage, against a stranger enemy." As Spain failed to support colonial development on the mining industry, so France failed to make it depend on the fur trade. Between the farmsteads of the English and the hunting areas of the French the clash was inevitable and the outcome certain. The colonial wars decided that the northern continent should be dominantly English, and that the United States should derive its political institutions and ideals almost entirely from English sources. The colonial wars also had an important influence on the colonists themselves. They strengthened the spirit of unity among them, they gave valuable military experience, and they increased the confidence of the colonists in their strength and in their ability to govern themselves.

While Pitt, whose policy of conquering the French territory in America was so successful, wished to see the colonies bound in a close federation with each other and with the homeland, and while the colonies seemed fused by victory into an imperial unity, nevertheless there were ominous signs. Wise observers suggested that it would be wise for England to let the French stay in Canada as a check on the "republican" tendencies in the colonies. The French minister, Choiseul, stated that the American colonies "will not fail to shake off their dependence the moment Canada is ceded." The

fall of Pitt, the abandonment of his conciliatory policy toward the colonies, and the accession of George III hastened this process.

Although France did not at once abandon her colonial ambitions nor her desire for revenge, as her alliance with the Americans in the war for independence indicated, nevertheless French naval power suffered a blow from which it was difficult to recover, and much French commerce was hopelessly lost. These wars gave Great Britain definite maritime supremacy, made her the preëminent colonizing country, gave an impetus to commerce from which her merchants derived wealth and prestige, and gave a stimulus to British manufactures which prepared the way for the Industrial Revolution of the late eighteenth century.

### 3. ECONOMIC CONDITIONS

The Commercial Revolution of the sixteenth century included the discovery of new trade routes, the expansion of European commerce beyond the narrow confines of the Mediterranean, and the transfer of commercial supremacy from the Italian and German city-states to the national states of the Atlantic seaboard. The new monarchies, Portugal, Spain, Holland, France, and England, in which national consciousness was strongly developed and centralized governments were well established, carried the national spirit into commerce. The wealth and prosperity of the state became the chief aim of rulers and statesmen. The economic doctrines known as Mercantilism arose.<sup>2</sup>

The new states needed money to arm and pay soldiers, to build warships, to maintain the growing army of officials, and to bribe the diplomats of other countries. The royal estates and prerogatives no longer sufficed to meet the growing expenses of the government. Systems of banking and credit were not yet in existence; actual gold was needed. The barter system of the middle ages was being replaced by the money economy of modern times. The greatness of Spain was associated with the treasure she drew from her American conquests. Precious metals, therefore, were in great demand, and the importance of their possession was overestimated.

<sup>2</sup> See Serra, *Brief Treatise on the Causes which make Gold and Silver Abound in Kingdoms where there are no Mines* (1613); W. Petty, *Essays in Political Arithmetic* (1655), *Treatise on Taxes and Contributions* (1662); T. Mun, *England's Treasure by Foreign Trade* (written about 1630, but not published until 1664). For a discussion of Mercantilism, see G. F. von Schmoller, *The Mercantile System* (1896).



If precious metals could not be secured from mines in the homeland or in colonial territories, they must be secured by maintaining a "favorable balance of trade," that is, by selling as much and buying as little as possible. Manufactures were exalted above agriculture as a source of national wealth, and foreign trade was considered more desirable than domestic trade. A large store of precious metals was considered important, a dense population was viewed as a source of strength; it was the duty of the state by every expedient to increase its national power and wealth. This could be best accomplished in the relation between the mother country and its colonies. If a nation exported costly manufactures to its colonies and imported cheap raw materials from them, the favorable balance of trade thus established would bring gold into the kingdom. To accomplish this, the home government might forbid or heavily tax the importation of manufactures from abroad, might prohibit the export of raw materials, might subsidize the export of manufactures, and might foster home industry by minute regulations. The same ends would be furthered if colonial trade was limited to the mother country alone, and if commodities were carried only in ships belonging to the mother country. Commercial interests governed foreign policy, and the belief that government should actively concern itself with industry and trade was generally accepted. These doctrines determined the commercial policy of England toward her colonies from the time of the Navigation Acts of Cromwell, and were responsible for much of the discontent, especially in New England, that led to the American Revolution. Colonies were estates to be exploited for the benefit of the merchants of the mother country.

While Spain and Portugal carried on commerce with their colonies as a government monopoly, the most popular method of developing a lucrative colonial trade was by means of chartered commercial companies. England, Holland, and France, especially, chartered numerous companies after 1550. To each of these companies was given the exclusive right to trade with and to govern the inhabitants of a particular colony, with the duty of defending the same. This system was in marked contrast to the commercial methods of the previous century. In the earlier period commerce was carried on by individual merchants depending upon support from their cities; in the new system, by joint stock companies chartered by national governments. The merchants of the earlier period had only trading privileges; the chartered companies pos-

sessed political powers also. The earlier merchants occupied a quarter in the foreign cities in which they traded; the new companies possessed independent colonies or fortified establishments on the coasts of foreign lands. The new trading with distant lands required the backing of a strong national government, demanded a monopoly of trade, and needed the combined capital of many men. Sometimes the company was required to pay money to the royal treasury; sometimes it was supported by royal subsidies.

The government expected the company, not only to develop a profitable trade, but also to furnish certain advantages to the nation, such as the creation of colonies, the increase of shipping, the provision of materials for the navy, the maintenance of a favorable balance of trade, and the humiliation of rival nations. More than fifty such companies were chartered between 1550 and 1700. The charter of the English Virginia Company, granted in 1609, gave to the 715 persons and organizations mentioned in the grant full possession of a territory stretching 400 miles along the Atlantic, thence "up into the land from sea to sea westward and northward." It was authorized to exploit all the resources of the country, soil, mines, fisheries, and forests. It was permitted to make all orders, laws, directions, and other provisions fit and necessary for the government of the colony. It had the right to repel by military force all attempts to invade the colony or to interfere with its activities. Its charter guaranteed to all Englishmen who came to the colony and to their posterity all liberties, franchises, and immunities of free-born Englishmen. Like the state, the chartered company had a territorial basis. It was a little democracy, exercising many functions of a sovereign government. Many of the essential elements afterward found in the government of the American state appeared in the chartered corporations that started English colonization in America.

When such a charter was brought to America by those who held it, it naturally served as a legal basis for large powers of self-government and as a guarantee of civil rights. As John Quincy Adams said: "By bestowing upon the colonies themselves an organization perpetually tending to independence, gradually predisposed the minds and measures of men to that final separation from the parent stock which it was impossible not to foresee must, in the lapse of ages, prove unavoidable."<sup>8</sup> In 1630 a majority of the officers of the Massachusetts Bay Company sailed for America

<sup>8</sup> *Collections of Massachusetts Historical Society*, 3d Series, IX, 202.

with their charter and settled at Boston. By this action, the Puritans founded an entirely new type of colony, since for the first time an incorporated company planted itself on American soil. The corporation became a commonwealth, grew rapidly in size, and assumed an attitude of independence, ignoring royal commands, particularly such as concerned trade. Connecticut and Rhode Island, offshoots of the Massachusetts colony, also received royal charters which they retained to the American Revolution, and which they continued as constitutions until well into the nineteenth century.<sup>4</sup> It was such companies as these which founded the American colonies; and the ideals, regulations, and governmental methods of corporate trading were woven into the political fabric of the New World.

While these companies were originally commercial associations seeking dividends, they were also expected to foster colonization; and in the broad fertile areas of America, occupied only by a sparse population of savages, and needing population to wrest profitable commodities from soil and forest, the quickest way to profit was to induce a large migration from the homeland. Conditions, governmental, religious, and economic, in the homeland added new motives, and the American settlements became a place where men could begin life with new possibilities. Hence many looked to America with other than commercial motives, and the policy of the company was gradually transformed by these non-commercial interests. Through force of circumstances, the private trading and colonizing companies were gradually changed into public and political corporations, and the desire for gain was supplanted by the desire to govern.

This was particularly true in the proprietary colonies, when the proprietor to whom the land was granted undertook the planting of a colony as one would cultivate a distant estate. He sent out shiploads of laborers to develop its resources and expected returns on his investment. From the standpoint of political theory, the proprietary colonies represented a feudal and absolutist system, more difficult to democratize than the chartered companies, which might be enlarged by the admission of new stockholders. While the original backers of these colonial enterprises became discouraged as to their financial success and were usually willing to sell out their rights to the Crown, the permanent importance of the movement was in the mapping out of domains and the migration of Europeans

<sup>4</sup> Conn. to 1818; R.I. to 1845.

to the New World. Gradually the colonies changed from their original condition of private ownership and control by company or proprietor to royal provinces possessing representative governments.

Economic conditions in England encouraged immigration to America. The increasing gold and silver in the country caused a rise in prices and rents which bore heavily on the farmer and workman. As farms were turned into sheep pastures, the peasants bore the burden of economic readjustment. The appropriation by the King of the monastery lands removed the chief asylum of the poor. The land was filled with "valiant rogues and sturdy beggars." John Winthrop, one of the leaders of the Puritan migration to America, wrote: "We stand here striving for space of habitation . . . and in the meantime suffer a whole continent as fruitful and convenient for the use of man to waste without improvement." Many men preferred the emigrant ship to the debtor's prison; and large numbers of paupers and criminals were sent by the order of the government to the colonies to aid the companies and the proprietors. A large proportion of the colonial immigrants came as "indentured servants," who sold their services for a number of years in order to pay the cost of their passage.

The general effects of the economic changes of the period were important. They started Europe on her career of world conquest, by which European languages, civilization, and institutions were spread to all parts of the earth. They increased knowledge, wealth, and comfort, and led to a rapidly rising standard of living. The change was especially notable in the lives of the middle-class dwellers in towns, the bourgeoisie. This class grew in intelligence, wealth, and political influence, and was destined to bring about revolution in industry and in government, gradually establishing the individual control of its members over industry in factories and its collective control over government in legislatures.

#### 4. POLITICAL CONDITIONS IN ENGLAND

The American colonies were settled at a time when political controversy was bitter in the homeland, and the influence of this contest had much to do with the colonization of the New World and with the ideas of government transplanted to America. At no time in English history were the claims of the monarch more extravagant than during the period when the English began to colonize

America. James I and Charles I based their rule upon divine right and upheld the absolute prerogative of the monarch. The powers of the King were in fact extensive. Officials were commissioned in his name and many were appointed by him. Foreign relations were in the main under his control. Parliament was called and adjourned at his pleasure, and its acts were subject to his veto. Justice was administered in the King's name and was often influenced by his wishes. All charters were issued by the crown. Many of the royal powers were exercised by ministers, law courts, and the Privy Council, which were the creatures and dependencies of the King.

The main dispute arose over the position and powers of Parliament. The King and his supporters held that it also was an appanage of the crown, an assembly of royal advisers meeting at the King's pleasure and subject to his wishes. The leaders of Parliament, however, claimed that it was a coördinate body of government, in some respects even independent and superior to the King. Parliament had behind it three hundred years of precedent, and declared at the opening of James I's reign that "there is not the highest standing court in this land that ought to enter into competency either for dignity or authority with this high court of Parliament which with your majesty's royal assent gives law to other courts,<sup>6</sup> but from other courts receives neither laws nor orders."

The King insisted that Parliament should not meddle in high matters of state and argued that the privileges of Parliament were derived from royal authority. Parliament replied by insisting upon its freedom of speech in dealing with matters of government, and referred to its liberties and privileges as the ancient birthright of English subjects. It looked to the past when Kings had been compelled to acknowledge the English liberties and parliamentary privileges which were now denied. It had gained by repeated usage a well-established procedure and set of precedents. Its control over taxation and its right to impeach the King's ministers had frequently been asserted and exercised.

At this stage of its development the English Government contained a system of checks and balances. The King still retained legislative power but could not use it without the consent of Lords and Commons. It was a form of organization designed to restrain without destroying the power of the King. The House of Commons was, however, not a democratic body. As the right to vote was an incident to land ownership, a large part of the English people had no

<sup>6</sup> *Apology of the Commons, 1604.*

voice in parliamentary elections. Hence the interests of the landholding and merchant classes were carefully guarded, but the interests of the laborers received scant consideration. Moreover, the conditions of the period favored an increase in parliamentary powers. The accession of the Stuarts, a half-foreign line, the end of danger of invasion from abroad, and the increasing demands of an unwise personal government weakened the royal power. The development of Puritanism, individualistic and assertive, strengthened the likelihood that Parliament would reassert its powers and try to extend them.

In the sixteenth century, under the strong Tudor monarchs, the fear of Spain, the strong national spirit which centered in the monarchy, the weakening, during the Wars of the Roses, of the nobles who had been the chief opponents of the King, the material prosperity of the kingdom, and the establishment of a national church under royal leadership, all tended toward absolutism and royal interference. By the close of the sixteenth century the need for a strong authority was diminished, and with the death of Elizabeth, the personal devotion to the ruler came to an end. Political power had passed from the nobles to the country gentry and the mercantile classes, and declining prosperity began to alienate their support of the monarchy. The judiciary insisted on its independence and on the supremacy of the common law over the royal mandate; Parliament insisted on its right to share in levying taxes and in determining general questions of policy. The dissenting sects were convinced that autocracy was incompatible with the religious freedom they demanded. Opposition to the King was brought to a head by the accession of James I with his high notions of royal prerogatives and his tactless personality. The lawyers put into definite and systematic form the constitutional and legal principles that had formed the bulk of English political thinking. The familiar doctrines of the supremacy of the common law, of the independence of the judiciary, of the sources of law in the people, and of parliamentary control over money grants were strongly urged.

It was during this period of controversy that the early settlements were made in America. The great majority of the colonists represented the parliamentary point of view. The nobility, the higher clergy, and the upper classes, among whom royalist spirit was strong, remained in England. The early colonists were drawn from the middle and lower classes, who were persecuted and dis-



satisfied. The merchants to whom the commercial charters were granted were also opposed to the high claims of the King. As the contest between King and Parliament became more intense under Charles I, and finally led to civil war, to the deposition and death of the King, and to the establishment of the protectorate under Cromwell, a considerable number who held royalist views also migrated to America, especially to the southern colonies. Opinion in the colonies was, therefore, not unanimous, and Old World differences were transferred to the colonies and played a part in local struggles there.

As the contest developed in England, increasing emphasis was placed on the ancient rights of Englishmen. The spirit of Magna Charta was revived, and the liberties of the people were stressed more than the privileges of Parliament. The Petition of Right (1628), the Grand Remonstrance (1641), and finally the Bill of Rights (1689) crystallized this point of view. Thus the heritage of civil freedom was reasserted with new insistence in England and was carried to America by the colonists as a cherished possession.

The English system of local government, which had lost much of its independence to the strong national government at home, was also transplanted to the colonies. There the pressure of the central government was almost completely withdrawn. Local officials in the colonies were not drawn from the gentry as in England. The wilderness, the Indians, the freedom from restraint, the religious freedom, and the opportunity for economic and social equality created a new set of conditions in America. Local government, therefore, developed along somewhat different lines, and with a much greater degree of independence than in the homeland. Practically every institution, however, had its prototype in England. In this, as in other matters, the foundations of America were laid in English conditions.

## 5. RELIGIOUS CONDITIONS IN ENGLAND

Political events were closely associated with religious conditions during the period of American colonization. The Protestant Reformation, which split Europe into two rival religious camps, led to bitter religious wars, civil and international, and to persecution of those who differed from the orthodox belief of the state, added a religious motive for emigration. The Reformation also revived the

medieval alliance between theology and politics. The relation of church to state was again made the chief problem of political philosophy. While England passed through the early Reformation period without civil war, and while Henry VIII and Elizabeth were able to strengthen royal power by establishing a national church under the headship of the monarch and by appropriating the church lands, no country in Europe experienced greater difficulty than England in coming to a state of religious equilibrium.

At the opening of the seventeenth century, when the colonization of America began, there were four distinct religious parties in England—Catholics, Anglicans, Puritans, and Independents. Catholics were in a minority in England and were sometimes persecuted and sometimes favored by the rulers of the period. Few Catholics left England and no American colony remained for long a Catholic community. The laws against Catholics in England were largely unenforced, they were never without hope of a more favorable condition for themselves at home, no American colony save Maryland for a time could provide a positively secure refuge for them, and the class to which most of them belonged, the nobility and gentry, was not that from which colonists were made.

The Puritans were originally those who followed the teachings of Calvin, and who tried to carry the principles of the Reformation into logical effect. The natural division in England would have been into Catholics and Puritans. The Anglican system was an artificial compromise established by the crown and kept in power by royal authority until it won the support and loyalty of the mass of moderate and conservative Englishmen. The attitude of the rulers gradually split the Anglicans and Puritans, and forced the Puritans into a more radical attitude and into opposition to the religious and political claims of the monarch. They demanded further changes in the ceremonies and doctrines of the church and finally attacked its organization and the headship of the monarch. They preferred the Presbyterian form of organization, with its system of decentralization and control by councils. However, the majority of them believed in a single national church and had no desire to break it up or to withdraw from its membership.

Gradually a group of extremists among them arose, under the name of Independents or Separatists, who opposed a state church, and who believed in the independence of each congregation. They wished to separate from the national church, and were far more dangerous to the established system than the Puritans. They were,



therefore, persecuted much more vigorously. By the opening of the seventeenth century, the contrast between Anglican on the one hand and Puritan and Independent on the other had become more evident, and the attitude of James I intensified these differences. James had met resistance from the Presbyterians in Scotland before his accession to the English throne; after his accession, he realized the value of his position as head of the English church in support of his claim to rule by divine right. His threat to make the Puritans conform or harry them out of the land drove them into opposition to his civil policy and allied their interests with those of Parliament. Religious and political motives were thus combined in the English civil wars. The Anglicans supported the King; the Puritans, Presbyterians, and Independents formed the main support of the parliamentary party. As the contest developed under Charles I, the Puritans believed that the Anglican church was leaning toward Catholicism, and became more bitter in their opposition to episcopacy and to the King. Their leaders were persecuted and imprisoned for their political opinions, and the laws against non-conformity were more rigidly enforced. Under this policy the great Puritan migration to America took place, and their religious and political ideas formed the main element in shaping the institutions of the colonies.

Separatists also came to America in considerable numbers, one famous group leaving England for the Netherlands and then migrating to Plymouth. By 1640, more than 20,000 Englishmen had settled in New England, almost all of whom represented the religious and political viewpoint of the dissenters. After 1640, when Parliament came into power, and the Puritans and Independents, who controlled Parliament and the army under Cromwell, were in control of the government, the Puritan migration slackened. From 1640 to 1660 Royalists and Anglicans came to America, settling chiefly in Virginia, Maryland, and the Carolinas. They gave to this section a set of ideas and institutions widely different from those of New England.

The breaking down of authority during the civil war in England was felt in religion as in politics. Numerous small religious bodies were organized, usually centering around some reformer who preached his interpretation of religious truth. Most of these sects disappeared, but one of them, the Quakers, survived and exerted a considerable influence in the New World. They opposed formality, ceremony, and organization in religion. Each individual

was to be guided by the "inner light." Because of their doctrines, and especially because they refused to take an oath in the courts, to pay tithes, or to obey certain laws, they were bitterly persecuted. Many thousands of this faith filled the jails of England. At first, the Quakers were recruited from the lower classes, but after the Restoration a number of men of good family joined the sect. Among this group was William Penn, who was a personal friend of Charles II, and who received from him a proprietary grant in America. His colony, with the attraction of a Quaker government, cheap land, and profitable business opportunities, turned a large tide of Quaker emigration to the New World.

Another considerable group of emigrants were the Scotch-Irish Presbyterians who came from Ulster, the Protestant plantation of Scotch and English established in North Ireland by James I. Conditions in Ireland were not favorable to Protestantism, and the governmental policy of England cut off Ireland from direct trade with the colonies and led to great economic distress. By the close of the seventeenth century there were more than a million Presbyterians in Ulster, but under religious and economic persecution a large part of this population migrated to America, establishing themselves especially in the Appalachian Mountain section. Their descendants became important in extending the frontier and in furthering the growth of democratic sentiment in the New World.

Religious wars in France not only weakened her colonial projects, but also strengthened the English colonies in America. The French Huguenots, persecuted at home, were not allowed to migrate to the French colonies. Richelieu insisted upon Catholic orthodoxy in the French lands overseas, and closed Canada to the Huguenots. New France, like New Spain, was entirely Catholic. When persecution of the Huguenots in France was revived, after the revocation of the Edict of Nantes in 1685, a considerable number of French Protestants came to America and added a valuable strain to the mingled elements that later became the United States.

The Reformation period was also marked by the formation of many small and peculiar religious sects. Anabaptists, branching off from the Lutheran Protestants of Germany, were bitterly persecuted and driven from place to place in Europe. The colonies in America, especially those that promised religious liberty, offered them a refuge. Large numbers of these German sects, Mennonites, Amish, and Dunkers, migrated to Pennsylvania, where the Quaker doctrines were quite similar to their own. They despised learning,

but were industrious and thrifty and held manual labor in high respect. While democratic in their outlook and organization, they believed the state to be a necessary evil, whose laws should be obeyed unless they conflicted with the dictates of conscience. They refused to hold public office or to take an oath in the courts. They opposed war and refused to bear arms. The numerous sects of Pennsylvania gave it a peculiar position among the American colonies.

In general, religion was a centrifugal influence in the colonies. Old colonies were split up and new centers of population established, as in Rhode Island and Connecticut, by religious disputes. These new colonies in turn attracted other groups of immigrants from Europe. Many of the differences among the colonies, and among the sections in the later history of the United States, had their origin in the religious conditions of the period. Among the many motives for colonization, religion held a peculiar place. The colonists wished to try a "holy experiment" on the shores of the New World. The Pilgrims declared in their solemn covenant that they undertook their voyage for "the glory of God and advancement of the Christian faith." The Virginia Company declared in 1610 that the main purpose in planting their colony was "to preach and baptize into Christian religion, and by propagation of the Gospel to recover out of the arms of the Devil a number of poor and miserable souls wrapt up unto death in almost invincible ignorance." "Many men for whom the dominant inducement was a material one were partly led by religious motives; many of the changes in Europe that unsettled men and made them more ready to leave their old homes were results of the Reformation. Religious motives were the earliest to send any really large body of settlers to the English colonies, and they remained for more than a century probably the most effective motives." <sup>6</sup>

## 6. DEVELOPMENT OF POLITICAL THEORY

The period of American discovery and settlement was one of intellectual ferment and progress. In the early part of the period the Humanists were reviving the literature and culture of the Greeks and Romans, and the rapid development of printing diffused knowledge and broadened education. While the Protestant Reformation checked the Humanist movement and turned mental

<sup>6</sup> E. P. Cheyney, *European Background of American History* (1904), 169-170.

effort into theological discussion and moral exposition, the Humanist influence continued, and great progress was made in art, in natural science, and in national languages and literature.

In painting and sculpture, Leonardo da Vinci, Michelangelo, Raphael, Titian, Rubens, Van Dyck, Velasquez, Murillo and Rembrandt were at work during the period 1500-1650. The same period in literature includes the work of Machiavelli, Ariosto, and Tasso in Italy; Rabelais and Calvin in France; Cervantes, Lope de Vega and Calderón in Spain; Luther in Germany; and Moore, Milton, Spenser, Shakespeare, and Bacon in England. The maritime discoveries added much to geographical knowledge and led to scientific map-making. The work of Copernicus, Kepler, and Galileo gave the first real knowledge of the nature of the universe and of the place of the earth in it, with profound results upon religious as well as scientific thought. Finally, Francis Bacon<sup>7</sup> and Descartes<sup>8</sup> pointed out new ways of using the human reason, attacked the scholastic and theological point of view, and began the modern methods of inductive science.

Of special importance as a background to American governmental development were the great movements in political thought during this period. In the middle ages the chief issue had been the relation of church to state. Emperor and Pope each supported his claim to world headship with elaborate arguments. The ghost of ancient Rome haunted men's minds and the ideal of world unity was firmly established. It was generally believed that there should be in Europe one state and one church, that authority in each should be concentrated in a single head, that church and state should be fused into a single system, and that the ultimate source of all authority was divine. The harmony between secular and spiritual authority in a unified church-state broke down because secular and spiritual matters could not be separated under the conditions of medieval life.

The most important developments of the later medieval period were the decline of feudalism, and the rise of national monarchies, the growth of commerce and of cities, and the decline of the papacy and the appearance of church councils. The medieval ideals of world unity and of a church-state were no longer possible. The political importance of the feudal nobles and of the clergy was diminishing, that of the King and of the common people was

<sup>7</sup> *Advancement of Learning* (1604); *Novum organum* (1620).

<sup>8</sup> *Discourse on Method* (1637); *Principles of Philosophy* (1644).

increasing, preparing the way for the later controversies between royal and popular authority within the national states and for keen international rivalries in warfare, commerce, and diplomacy among them. The Kings were more successful in asserting their independence of church control than the emperor had been; in the church the Great Schism, the Babylonish Captivity, and the Conciliar Movement were paving the way for the Protestant Reformation. National, anti-papal, and democratic ideas were prevalent.

Marsiglio of Padua<sup>9</sup> and William of Ockam<sup>10</sup> as early as the fourteenth century argued that the state is independent of and, in its own sphere, superior to the church, that the source of authority is the whole body of citizens, and that the administration of government, in church and state, should be in the hands of persons chosen by the people and responsible to them. For a century their ideas concerning the location of authority and the system of representation were violently debated in the ecclesiastical world; and they were revived later by those who supported people and Parliament against royal power. Their doctrines influenced the writings of John Wyclif<sup>11</sup> in England and of John Huss<sup>12</sup> in Bohemia, the forerunners of Luther. They opposed the political claims of the clergy and asserted the right of the King to seize church property. They emphasized the equality of men, exalted the importance of the state, strengthened the nationalist attitude, and led to popular and communistic uprisings on the part of the lower classes.

Similar liberal ideas were put forward in the fifteenth century by the leaders of the Conciliar party. They opposed the monarchical organization of the church under the papacy and held that final authority was vested in a representative church council. This contest foreshadowed the later political contest between autocracy and constitutional principles in the state. In the writings of John Gerson, chancellor of the University of Paris, Cardinal Nicholas of Cues, and Æneas Sylvius, afterward Pope Pius II, appeared the concepts of the state of nature, of natural rights, of social contract, and of the right of resistance which became familiar in the revolutionary theory of the seventeenth and eighteenth centuries.

The revived study of Roman law and the important part played by jurists as royal advisers also affected political thought during

<sup>9</sup> See the *Defensor pacis* (about 1324).

<sup>10</sup> See the *Octo quæstiones* and the *Dialogus*, in Goldast, *Monarchia*, II.

<sup>11</sup> See his *De dominio divino*; *De civili dominio*; *De officio regis*.

<sup>12</sup> See his *Determinatio de ablatione temporalium a clericis*.



the fifteenth century. The Roman doctrine of natural law, superior to the commands of any ruler or to any human enactment, was given added importance. The Roman theory that ultimate sovereignty resided in the mass of the citizens and that the authority of rulers was delegated to them by the people was revived. The Renaissance aroused interest in the democracy of the Greek cities and in the Roman law of contract and corporation. While the application of the popular sovereignty ideas inherent in these concepts was checked by the victory of the Pope over the Councils and by the theory of divine right revived by the Reformation, the ideas reappeared in the latter part of the sixteenth century and finally worked themselves out in the revolutions of the seventeenth and eighteenth centuries.

The most important political treatise at the close of the middle ages was that of Machiavelli.<sup>13</sup> By this time the tendency toward nationality and monarchy was generally successful. The temporal power of the church had largely disappeared. Accepting practical conditions in Italy, where consolidation had made least progress, Machiavelli gave attention to practical politics, to the machinery of government and the forces that work it. He believed that the state should exist for its own sake, should aim at its own preservation and advantage, and should not be bound by the obligations that determine the action of private persons. He frankly subordinated moral principles to the necessities of political existence; for the preservation of the state and its authority, any political means was justified. He believed that the art of politics depended upon motives of human self-interest, and that force and craft were the essence of successful government. He also emphasized the value of expanding the territory over which a state exercised dominion. His arguments for conquest had far-reaching results in the international conquests and colonial ambitions of the European states, and his maxims of practical politics were exemplified in the practices of diplomacy.

The effort of Machiavelli to separate politics and religion was temporarily checked by the Protestant Reformation. The relation of church to state was again made the main problem of political philosophy. The kings, as champions of the sovereignty and independence of the new national states asserted power derived from God. The Protestant movement exploited this theory in the interest of Protestant rulers. The desire to appropriate church property

<sup>13</sup> *The Prince* (1513).

was a powerful motive in inducing rulers to support the Protestant revolt, and the position of the ruler as head or protector of the new religious system strengthened his claim to rule by divine right. The theory of divine right was thus applied to uphold monarchy and to support particular dynasties; and disobedience to royal command became a sin against God as well as a political offense. The diversities of doctrine and the rise of radical sects also led the state to assume the power of defining creeds and punishing heresies, and the power of government was in this way further extended. The immediate effect of the Reformation was to strengthen the state and the authority of the monarchs.

Nevertheless, the ultimate effect of the Reformation furthered individual liberty and democracy. The reformers declared the essential equality of men and believed in freedom of conscience. Insisting upon the right to worship according to their own beliefs, they resisted royal power when it interfered in matters of conscience. The followers of Calvin, in particular, believed that they were God's elect and, in states in which they were not in control of the government, asserted their right to individual judgment and to freedom of conscience. These ideas, as worked out by Calvinists in France, the Netherlands, Scotland, England, and America, were among the most important contributions to the establishment of freedom and self-government. Calvinism also promoted political liberty because of the republican character of its church organization. The body of the congregation took responsible part in the selection of the clergy, and laymen shared power with the ministers. Men, accustomed to self-government in church affairs, claimed similar privileges in political affairs. In the New England colonies, this idea became especially important.

By the close of the sixteenth century, therefore, political thought had worked out a fairly clear conception of the sovereignty of the state, that is, of a single supreme authority within each state, and of the independence of each state from other states in a family of nations. To these ideas many thinkers contributed, but their work was systematized and put into clear statement by two great publicists. The internal aspect of sovereignty, in the relation of a state to its citizens, was worked out by Jean Bodin.<sup>14</sup> The external aspect of sovereignty, that of the relation of a state to other states, occupied the attention of a group of Spanish jurists<sup>15</sup> and was

<sup>14</sup> *De republica libri sex* (1576).

<sup>15</sup> Especially Victoria, Vasquez, Ayala, Suarez, and Gentilis.

finally elaborated in the work of Grotius.<sup>16</sup> Nationalism had replaced cosmopolitanism, and the family of nations and the balance of power had replaced the unity of the medieval empire.

By the opening of the seventeenth century, the controversy over the nature of authority within the state was becoming the great issue in political thought, especially in England. The theory that the monarch ruled by divine right, put forward first to oppose the temporal claims of the Pope, was strengthened by the growing royal power and by the establishment in some countries of Protestantism as a state worship under the leadership of the national ruler. Luther and Calvin taught passive obedience to the powers that be. The Politiques<sup>17</sup> in France, realizing the evil effects of the civil wars and the religious controversies on the strength of the nation, urged religious tolerance and the loyalty of subjects to rulers. They asserted that the monarch derived his power from God and ruled by indefeasible hereditary right. The Scotch Catholic writers,<sup>18</sup> and James I and Filmer<sup>19</sup> in England, upheld the divine right of kings.

On the other hand, the Calvinist anti-monarchists in France,<sup>20</sup> Scotland,<sup>21</sup> England,<sup>22</sup> and the Netherlands,<sup>23</sup> and the Jesuit opponents of secular power in the interest of ecclesiastical supremacy, argued for popular sovereignty and a limited royal power based on contract. The way was thus prepared for the seventeenth and eighteenth century controversies between King and people, between the doctrine of divine right and that of popular sovereignty and social contract.

The establishment of the Tudor monarchy in sixteenth century England was not conducive to political speculation. The dominant political theory was that of divine-right monarchy and the passive obedience of subjects. Tyndall's *The Obedience of a Christian Man*, Latimer's sermons on *An Exhortation Concerning Order and Obedience*, and Heywood's play, *Royal King and Loyal Subject*, were typical of Tudor thought. Even those writers, such as Richard

<sup>16</sup> *De jure belli ac pacis* (1625).

<sup>17</sup> Especially Du Bellay, Servins, Barclay, Grégoire, and Bodin. On the Politiques, see H. J. L. Baudrillart, *Jean Bodin et son temps* (1858), and J. N. Figgis, "Political Thought in the Sixteenth Century" in *Cambridge Modern History*, III, Chap. xxii.

<sup>18</sup> William Barclay and Adam Blackwood.

<sup>19</sup> See his *Patriarcha, or the Natural Power of Kings* (1680).

<sup>20</sup> See the *Vindiciae contra tyrannos* (1576).

<sup>21</sup> George Buchanan, *On the Sovereign Power Among the Scots* (1579).

<sup>22</sup> Sir John Fortescue, *On the Nature of the Law of Nature*.

<sup>23</sup> Johannes Althusius, *Systematic Politics* (1603).



Hooker<sup>24</sup> and Thomas Hobbes<sup>25</sup> who developed in England the ideas of social contract, distorted this doctrine to support strong government and monarchic power. Many believed that men originally lived in a state of nature, full of contention and violence. By formal consent, they established political organization and authority. The contract by which this was done was perpetually binding, but the sovereign, created by the contract, was not a party to it and was not bound by its terms. His power was unlimited and the right of subjects to resist was denied. These arguments supported the view of royal power held by James I and Filmer. However, the attempt to divert the social contract theory to the support of absolutism was a failure, and the main line of development in the direction of revolution and democracy was taken up by the parliamentary group.

Jurists, such as Sir Edward Coke,<sup>26</sup> upheld the sovereignty of the law and argued that even the King was subject to the long-established common-law principles. Learned men, such as John Selden,<sup>27</sup> scoffed at supernatural sanction for royal power and viewed the monarchy merely as a constitutional form. Parliamentary leaders, such as Eliot, Pym, and Hampden, emphasized the civil liberties of Englishmen that led to the Petition of Right, the Bill of Rights, and the Habeas Corpus Act. These fundamental liberties were soon identified with natural rights; and as the contest between King and Parliament developed, less attention was paid to legal constitutional arguments, and more reliance was placed on the theories of natural rights, social contract, and the right of revolution put forward by the more radical groups. The best statement of these principles appeared in the writings of John Milton,<sup>28</sup> James Harrington,<sup>29</sup> Algernon Sidney,<sup>30</sup> and John Locke.<sup>31</sup>

Milton advocated separation of church and state, defended liberty, and held that ultimate political power rested in the people, who had the right to depose tyrants. Harrington taught that political authority naturally follows the distribution of wealth, and

<sup>24</sup> *The Laws of Ecclesiastical Polity* (1594).

<sup>25</sup> *The Leviathan* (1651).

<sup>26</sup> In the *Institutes*.

<sup>27</sup> In his *Table Talk*, see edition by Reynolds.

<sup>28</sup> *The Tenure of Kings and Magistrates* (1649); *Defensio populi Anglicani* (1651); *The Ready and Easy Way to Establish a Free Commonwealth* (1660).

<sup>29</sup> *The Commonwealth of Oceana* (1656).

<sup>30</sup> *Discourses Concerning Government* (1698).

<sup>31</sup> *Two Treatises of Government* (1690).

that political stability would be secured only by extending a share in government to those who possessed property. He proposed a senate of "natural aristocrats" to propose legislation, a council of popularly chosen representatives to vote on such proposals, and a magistracy to carry on the administration. This system was to be strengthened by election by secret ballot, by rotation in office, and by compulsory education under state control. Harrington's work was influential in America. The constitutions of Carolina, New Jersey, and Pennsylvania reflected his thought, and his authority was quoted in the discussion that preceded and followed the creation of the American Constitution. Sidney expounded the theory of limited contract, in which the people delegated certain powers to their rulers and reserved certain liberties to themselves. He argued that the contract bound only those who made it, or their immediate descendants, and that it remained in force only so long as the ruler used his power for the public good. His work also was eagerly studied in the New World during the eighteenth century.

The most influential writer of the period was John Locke. He attacked the divine-right theory of the Anglicans and the absolutism of Hobbes. He believed that in the state of nature, when men lived under natural law, all men were equal and possessed equal natural rights. This condition could not be maintained because of the inability of the individual to maintain his rights against injustice, and because of the absence of an authority to settle disputes. Hence individuals, by a social contract, formed a body politic for the purpose of safeguarding their natural rights. Within this body a majority ruled. When injustice became obvious, the majority possessed the right of revolution and might dissolve the government. Locke's theories stated clearly the ideas of natural rights, government based upon consent, popular control, and right of resistance. It also emphasized the individualistic implications of the social-contract idea. In America, the authors of the Declaration of Independence and of the Constitution drew largely upon Locke's ideas.

During the period of Cromwell's rule, attempts were made to draw up written frameworks of government based on the theory of social contract. The *Agreement of the People*, put forward in 1647 as a basis of compromise between army, King, and Parliament, provided for a popularly-elected representative body with limited powers, contained a bill of rights, and prohibited the gov-

erning body from interfering with the fundamental liberties. Later (1654), the *Instrument of Government*, providing for a Lord Protector and a Parliament, with carefully limited powers, was proposed. While these ideas of a written constitution and a constitutional check upon government were not put into practical operation in England, they reappeared later in America as fundamental principles in political thought. The political ideas of the American colonists were drawn mainly from the historical precedents of the seventeenth century in England and from the theories developed by the revolutionary party at that time.

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## CHAPTER III

### COLONIAL POLITICAL THOUGHT

#### 1. CHURCH AND STATE IN THE COLONIES

In all the colonies except Rhode Island and Pennsylvania, the usual seventeenth century idea of a church maintained by the authority of the state prevailed. Puritanism was thoroughly established in New England, and community life centered largely in the church.<sup>1</sup> Interest in religious speculation and dogmatism was intense and an inquisitorial guardianship of private and social life was set up. In Massachusetts and Connecticut especially, religion was cherished with ardor, dissenters were persecuted, and the clergy became autocrats in practical politics as well as in questions of doctrine and morals. Heresies were punished by whippings, fines, and imprisonments. Quakers and witches were hanged, and men like Roger Williams, who wished to separate church and state, were banished.

The Puritan church was a body of believers united by covenant for public worship and mutual edification. The authority of the church rested partly upon divine commission, partly upon mutual consent, and partly on the inherent right of all associations to preserve themselves from disintegration. This authority was exercised through a mixed form of government. God, as head of the church, represented monarchy; the elders represented aristocracy; and the body of believers represented democracy. The ideal was a church democracy, an organic unity in which rulers and ruled formed one body and were of one mind.<sup>2</sup>

The New England churches were organized on the Independent or Congregational form. Each congregation elected its own deacons and ministers, was a law unto itself, and was but little influenced by the occasional church councils which soon fell into disuse. A system of public education was among the first institutions estab-

<sup>1</sup> For a description of the life and ideals of the Puritan Commonwealth, see William Bradford, *History of Plimoth Plantation*; John Winthrop, *Model of Christian Charity*; *The Journal of John Winthrop*; Cotton Mather, *Magnalia Christi Americana*.

<sup>2</sup> Cotton Mather, *Magnalia Christi Americana* (ed. 1852), II, 213, 222-224.

lished by the Puritans, and the common schools were soon supplemented by Latin schools and academies. The list of capital crimes was a long one, and great publicity was given to all manner of punishments.

In the southern colonies the Church of England was generally established, but religion was viewed as a social custom rather than as a stern duty. The means of education were generally lacking, and Governor Berkeley's statement,<sup>3</sup> in his report on the Virginia colony, represented the belief of the ruling classes that education of the masses fostered an undesirable spirit of political and social independence. The middle colonies showed a mixture of religious as well as of political types. A greater degree of religious toleration and a more democratic spirit prevailed than in the other colonies. The proprietary colonies of Pennsylvania and Maryland were founded as refuges for the extreme forms of religious belief, Quakers and Catholics respectively; but the Quakers in Pennsylvania welcomed good men of all creeds, and the Catholics in Maryland were soon outnumbered by Protestants.

The church organization of the Quakers was even more democratic than that of the Puritans. There was no special body of clergy, women were granted equal rights with men, and meetings were conducted informally without a presiding officer. Religious toleration was granted to all believers in God, and the theocratic influence, so strong in New England, was absent. The refusal of the Quakers to take an oath caused some difficulty as it sometimes led to failure to secure a jury and to convict criminals, but this was later remedied by allowing the Quakers the privilege of affirming. Their refusal to perform military duty was more serious, as they consistently refused to send their quota of troops for the colonial wars or to grant money for military operations. They did, however, vote money grants to the crown and made contributions for other than military purposes.

In the southern and middle colonies religious controversy played but little part in politics. In New England, however, the relation of church to state was a matter of bitter controversy. The Puritans were more interested in founding a spiritual than a political system. They adopted the doctrine of Calvin,<sup>4</sup> whose

<sup>3</sup> "I thank God there are no free schools, nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best of governments. God keep us from both!"

<sup>4</sup> See his *Institutes of the Christian Religion* (1535).



writings were frequently quoted by New England clergymen and statesmen, that the primary function of the state was to promote public worship and to further the interests of religion. His system was distinctly aristocratic and authoritative. The moral code was made the basis of law, an ascetic form of life was enjoined by severe penalties, and dissenting ideas were ruthlessly crushed. The Puritans believed that the Bible was the only authoritative guide to human conduct, and attempted to deduce from it their whole system of public law. They held that a form of civil government, instituted by God, was outlined in the Scriptures, especially in the Old Testament.<sup>5</sup> The political experiences of the children of Israel were constantly drawn upon for precedents; the laws of Moses were believed to be of general application at all times and for all peoples. Accordingly, their system of government was decidedly theocratic. They aimed to establish a Christian commonwealth in which the magistrates were in covenant with God.

To the Puritan all life was suffused with religion, and the civil magistrates were part of the larger spiritual kingdom. Government was an ordinance of God for the good life. It was the duty of the civil power to restrain and punish "idolatry, blasphemy, heresy, venting corrupt and pernicious opinions that destroy the foundations, open contempt of the word preached, profanation of the Lord's Day, disturbing the peaceable administration and exercise of the worship and holy things of God."<sup>6</sup>

The clergy dominated the political as well as the religious and intellectual life of the community. Their sermons dealt frequently with political questions, their opinions bore weight on all matters of public policy.<sup>7</sup> In several of the New England colonies membership in an approved orthodox church was essential to full citizenship. Taxes were levied for church support, attendance at church services was compulsory, and strict Sabbath observance laws were enacted. In New England there was a highly developed theory of divine law. This idea of a supreme law of God was closely associated with the theory of a law of nature, with which it was generally identified. The Mayflower Compact, the Fundamental Orders of

<sup>5</sup> John Eliot, *The Christian Commonwealth: or the Civil Policy of the Rising Kingdom of Jesus Christ*, in *Mass. Hist. Soc. Collections*, Third Series, IX (1659). This was a political utopia based on the theocratic doctrines of the Puritans.

<sup>6</sup> Cotton Mather, *Magnalia Christi Americana*, II, 236.

<sup>7</sup> The code of laws adopted in 1641, under the title "The Body of Liberties," was the work of a clergyman, Nathaniel Ward. It was a combination of the English common law and the law of Moses.

Connecticut, and the Fundamental Articles of New Haven asserted the doctrine of a divine basis and function of civil government; and such codes as the Massachusetts Body of Liberties show the reliance of the colonists upon their interpretation of the law of God rather than upon the common law of England.<sup>8</sup>

The theory of the Puritan theocracy that the chief aim of the state was to further the true religion and that the civil power should extend a wide control over religious affairs was not entirely unchallenged. It was resisted by the Quakers and the Baptists, both of whom were bitterly persecuted for religious and political heresy. The leading spokesman of the opposition was Roger Williams,<sup>9</sup> who was finally banished from the Massachusetts Bay colony and became the founder of Rhode Island, where dissenters from the orthodox settlements were welcomed. Williams, a protégé of Sir Edward Coke, the famous jurist, argued that church and state were distinct societies and that a state might exist without religion or with diverse religious views within it. He viewed the church as essentially similar to other associations, which might change or disappear without affecting the political existence of the commonwealth. Williams insisted upon four cardinal points: first, that "persecution for cause of conscience is most evidently and lamentably contrary to the doctrine of Christ Jesus"; second, that "no one should be bound to worship or to maintain a worship against his own consent"; third, that church and state should be separated and that the choice of civil magistrates should not be limited to church members; fourth, that civil magistrates should not interfere in matters of conscience, but that their powers should extend "only to the bodies and goods of men."<sup>10</sup> As a political philosopher Williams was a forerunner of Paine and the French romanticists, finding the end of government in public welfare, and the cohesive social tie in the principle of good will.<sup>11</sup>

John Cotton, the spokesman of the Puritan theocracy, admitted

<sup>8</sup> P. S. Reinsch, *English Common Law in the Early American Colonies* (1899).

<sup>9</sup> See the controversy between John Cotton and Roger Williams in the pamphlets *The Bloudy Tenent of Persecution for Cause of Conscience* (1644), by Williams; *The Bloudy Tenent washed, and made white in the Blood of the Lamb* (1647), by Cotton; *The Bloudy Tenent yet more Bloudy* (1652), by Williams. *Narragansett Club Publications*, III-IV.

<sup>10</sup> *The Works of Roger Williams*, edited by members of the Narragansett Club (6 vols., 1866-1874).

<sup>11</sup> J. E. Ernst, *The Political Theory of Roger Williams* (Doctoral dissertation at the University of Washington).



that church and state were separate societies,<sup>12</sup> but insisted that the church was the chief society in the state and that purity of religion was essential to the welfare of the state. Cotton argued, therefore, that it was the duty of the magistrate to care for the souls of his people, and that the state should enforce the moral code as a part of its law.<sup>13</sup> He wished to found a Hebraic theocratic state in which political rights should be subordinate to religious conformity, in which the magistrates should be chosen from a narrow group, irresponsive to popular control, and in which the ministers of the gospel should be the court of last resort to interpret the divine will. Williams believed that the church was a spiritual association and should depend upon spiritual weapons rather than upon the force of the state. He attacked the union of church and state, opposed enforced attendance on church service, and would have abolished all contributions for religious purposes, save those that were voluntary. He viewed the state as a secular institution which should regulate the relations of man to man, but not those of man to God. He was a confirmed individualist, carrying to its logical conclusion the Reformation principle of free inquiry. Cotton argued for civil punishment of heresy; Williams, for freedom of conscience. The Puritans were so confident that they were God's elect and that their religion was the true one, that they considered it proper to call upon the state to maintain it, by force if necessary.

In several ways, then, Puritanism was decidedly undemocratic. It required membership in a particular church for the right to take part in government; it gave political preëminence to the clergy and the elders. It found in the Old Testament justification for theocracy as the best form of government in church and state. Puritan leaders openly denounced democracy as the meanest form of government, and upheld aristocracy as natural and preferable.<sup>14</sup>

<sup>12</sup> Calvin had held that church and state were separate societies, but that the primary function of the state was to maintain the true religion. In practice, at Geneva, he found it impossible to separate ecclesiastical and political authority in accordance with his doctrines, and a system in which church and state were virtually combined into a theocratic unity was established. Where Puritans were in authority this attitude was adopted. When in the minority, however, as in England, France, Scotland, and Holland, they insisted on freedom from state control, resisted authority, and became ardent champions of liberty of conscience.

<sup>13</sup> *The Way of the Congregational Churches Cleared* (1648), in *Narragansett Club Publications*, II; A. Young, *John Cotton's Life and Letters* (1846).

<sup>14</sup> Rev. John Davenport, *A Discourse about Civil Government in a New Plantation* (1673); "Letter of John Cotton to Lord Say and Seal" (1636), in Appendix to Hutchinson's *History of the Colony of Massachusetts Bay*, I, 498; *Life and Letters of John Winthrop*, ed. by R. C. Winthrop (1863).

John Winthrop insisted that the magistrates were God's vicegerents, with authority beyond popular limitation or control. The people he considered as factious, overruled by expediency and self-interest, incapable of governing wisely. At the same time, there were decidedly democratic elements in the religious views of the colonists. The majority of them were dissenters from the established church of England. They came to America to secure religious freedom, and religious liberty and political liberty have ever gone hand in hand. There is but a step from religious dissent to political opposition. The democratic system of congregational church government also gave rise to a democratic political spirit. Each congregation was a miniature republic, choosing its own pastor and church officers, controlling its own affairs, independent of other congregations. The same system was applied in the government of the community, and the spirit of local self-government was thereby fostered. Town meetings and boards of selectmen were the secular outgrowth of church congregations and deacons. The social contract theory had a special meaning to the colonists. It was the Congregationalist church covenant applied to civil society. This theory emphasized the importance of the individual as the unit in both ecclesiastical and political society, since it was voluntary consent and not divine right that formed the basis of both church and state. Hence a germ of individualism and democracy existed which could not fail to develop under favorable conditions.

In contrast to the aristocratic doctrines of the Puritans, the thought of the Independents was liberal and democratic, and in the end it was the Congregationalism of Connecticut and Rhode Island rather than the Presbyterianism of Massachusetts that furnished the democratic principles and institutions of later years. While Cotton and Winthrop were attempting to set up a theocratic oligarchy in Boston, and Roger Williams was erecting a radical and leveling democracy at Providence, Thomas Hooker was establishing a moderate democracy at Hartford. He taught that "the foundation of authority is laid, justly, in the free consent of the people," that "the choice of public magistrates belongs unto the people by God's own allowance," and that "they who have the power to appoint officers and magistrates, it is in their power also to set bounds and limitations of the power and place unto which they call them." He believed in the compact theory of the state, the doctrine of popular sovereignty, and the conception of the state as a public-service corporation, strictly responsible to the will of the majority.

He was the ablest advocate of New England Congregationalism and democracy,<sup>15</sup> and his congregation transplanted English Independency to the New World. Even in Massachusetts democratic stirrings were soon evident, and the efforts of Increase and Cotton Mather to strengthen the theocratic control of the Presbyterian clergy was met by the able efforts of John Wise<sup>16</sup> in support of the Congregational principle and the democratic type of government. He concluded that "a democracy in church or state is a very honorable and regular government according to the dictates of right reason, and, therefore . . . these churches of New England, in their ancient constitution of church order, it being a democracy, are manifestly justified and defended by the law and light of nature."

## 2. POLITICAL INSTITUTIONS IN THE COLONIES

The political ideas of a period cannot be understood apart from the political institutions then existing. Moreover, the system of government actually set up often represents political principles more accurately than the writings of political philosophers or of statesmen. Until the opposition to the regulative measures of the British Parliament in 1763, there was almost no theorizing about government in the colonies. Important political and constitutional development was taking place, but the theory of the times was implicit in institutional history rather than explicit in writings on political philosophy.<sup>17</sup> To a certain extent colonial institutions were imposed from without by the authority of the mother country. To a larger extent they were the creation of the colonists themselves, worked out under the conditions of the New World on the basis of the English traditions and institutions which were transferred to America. From them, therefore, much information may be gained as to the prevalent theory of government. Moreover, the institutions of the colonial period were not destroyed by the American Revolution. While there were critics of English political institutions

<sup>15</sup> See his *Survey of the Summe of Church Discipline* (1648); Sermon before the General Court on May 31, 1638, in Connecticut Historical Society, *Collections*, I, No. 19.

<sup>16</sup> See his *Churches' Quarrel Espoused* (1710); *Vindication of the Government of the New England Churches* (1717).

<sup>17</sup> Source material for the study of colonial records and laws may be found in *Collections* of Massachusetts Historical Society; *Pennsylvania Colonial Records*; *Archives of Maryland*; *Collections* of the New York Historical Society; *Journals of the House of Burgesses of Virginia*; *Legislative Journals of the Council of Colonial Virginia*; *Winthrop's Journal*; T. Hutchinson, *History of the Province of Massachusetts-Bay*; W. MacDonald, ed., *Select Charters and Other Documents Illustrative of American History, 1606-1775* (1906).

among the colonists, the majority had no desire to supplant the form of political organization under which they lived. Most of the colonial institutions survived. The colonial charters were revived in the state constitutions. The colonial governor, with reduced powers and with a different method of selection, became the state governor. The colonial legislature went on with little change; county and town government were but slightly modified. Everywhere the English common law remained the basis of the legal system.

The thirteen colonies differed considerably at first in political organization. Some were governed under charters granted by the King to a proprietor, others under charters granted to a company or corporation; others, lacking a fundamental law, drew up their own framework of government<sup>18</sup> until they could obtain a formal charter. For a long time the mother country had no definite policy of colonial government and these charters differed widely. Ultimately, eight of the colonies became royal provinces, administered by governors appointed by the King; of the remainder, three were proprietary and two retained their charters to the Revolution. As time went on a marked tendency toward political uniformity was apparent.<sup>19</sup> Each colony had a legislature, which tried steadily to draw to itself increasing powers. All used the English common law and had essentially similar judicial organization and procedure.

The control of the mother country was exercised mainly through the crown. The lands of the colonies belonged to the sovereign and their governments owed their validity to his creation or assent. The crown might grant or revoke charters, hear appeals from the colonial courts, in most of the colonies veto colonial legislation and, except in Connecticut and Rhode Island, appoint the governor or confirm the governor appointed by the proprietor. These powers were normally exercised through subordinate agencies. Colonial commerce was controlled by the Board of Commissioners for Trade and Plantations. Governmental questions were referred to the Privy Council. In the greater part of the colonial period, Parliament was considered to have little control over the colonies. Its acts applied to them only when they were expressly mentioned, and such acts were few. In England the virtual supremacy of Parliament was established and recognized; in America the colonists admitted no sovereignty but that of the crown. The growth of parliamentary

<sup>18</sup> For example, the Fundamental Orders of Connecticut in 1639.

<sup>19</sup> G. Chalmers, *Political Annals of the Present United Colonies* (1780).

power in England, and the rise of new imperial problems led Parliament, after the middle of the eighteenth century, to take a more active control over colonial affairs. To this the colonists objected, and the ensuing controversy led to the American Revolution.

Growing out of business enterprises, the control in the colonies was largely managerial, and especial attention was given to the executive power. The governor represented the interests of the crown or the proprietors; the assemblies, which grew up later, were the work of the colonists and represented their point of view. Until the Revolution, the executive, though often opposed, kept the upper hand. In the royal colonies the governor was appointed by the crown. His function was twofold. He was the King's agent and was expected to safeguard imperial interests, enforce the orders of the home government and keep it advised on colonial conditions, and supervise the minor royal officials in the colony. As head of the colonial system, he enforced the laws made by the assembly, appointed subordinate officers, and represented the colony in its dealings with other colonies and with foreign countries. He exerted much influence over legislation, might dissolve the assembly, and had an absolute veto over its acts. In most colonies he appointed the council, which acted as the upper house, and presided over its meetings. He was also head of the judicial system and had extensive powers of pardon. In the proprietary colonies, executive power was exercised by the proprietor in person or by an agent selected by him and confirmed by the crown. In the charter colonies of Connecticut and Rhode Island, the voters chose the governor by a system of indirect election.

The governor's council, usually appointed by him, possessed advisory powers, exercised some control over appointments, and performed certain administrative functions. With the governor it formed the highest court of appeal in the colony, and in most colonies it was the upper house of the colonial legislature, the forerunner of the modern state senate. The lower house of the assembly was elected by the qualified voters of the colony. Its members were apportioned by general law among the towns or counties, more nearly according to population than was the case in England, though no effort was made to create equal electoral districts. In general, representatives were residents of their districts. Besides, the suffrage was limited to a small part of the population. Property qualifications were universal, and were especially high for office holding. In many colonies religious qualifications were imposed.



Catholics were often debarred, and some southern colonies excluded Frenchmen, Jews, and Negroes. Besides, the size of the electoral districts and the difficulty of travel made the actual vote cast extremely small.

In all the colonies the assembly gained steadily in power. It came to look upon itself as possessing authority similar to that of Parliament in England. It asserted and exercised the right to make laws, often avoiding the governor's veto by passing temporary acts or by taking advantage of the long time required before official disapproval could come from England. Its control over the purse and its right to fix the governor's salary and to withhold its payment was its main source of power. Constant quarrels between governor and assembly in the eighteenth century centered in the control of colonial finances, and the assemblies finally established their right to make or to refuse to make appropriations. The governor's policy was often prevented by the refusal of the assembly to vote funds, and the governor was often compelled to ignore his instructions from the homeland in order to get along peaceably with the assembly. In the latter part of the colonial period the assemblies were growing in power and in the spirit of independence, and had gained valuable experience in the long contest for what they considered to be their legitimate rights. At the same time, since their laws were frequently vetoed by the governor or disallowed by the home government because of conflict with English usage, or the colonial charter, or parliamentary statutes, the colonists became familiar with several political principles which have continued orthodox in the United States; first, the idea of an executive veto; second, the idea that a law may be invalid because it conflicts with a more fundamental law. Long experience accustomed the colonists to written constitutions beyond the competency of their legislatures to change, and to a semi-judicial review of their legislation with the possibility of annulment of their acts.

Judicial organization was essentially similar in all the colonies. All had local courts, usually presided over by a justice of the peace appointed by the governor. Above these in most cases came courts of quarter sessions, presided over by the justices of the county. Finally, each colony had a higher court, usually composed of the governor and his council, sometimes a separate body of appointed judges. From these courts appeal might be carried to the King and Privy Council in England.

Local government in the colonies represented less closely the

system of the mother country, varied more widely from colony to colony, and was largely determined by the conditions of settlement and of life in the colonies themselves. New England was settled in compact communities, partly for protection against the Indians, partly to retain the close fellowship of their religious congregations, and partly because of their economic activities of small farming and trade. The main unit of local government was the town, with governing authority vested in a town meeting or general assembly of the voters. This body made local regulations, levied taxes, voted appropriations, and chose an executive committee, or board of selectmen, to administer town affairs between the annual town meetings. The county existed primarily as a judicial district, but its local government functions were not important.

The plantation system of the southern colonies scattered the population and gave a more aristocratic tendency to local government, placing control in the hands of the large landowners. There the unit of local government was the county, similar in its main outlines to its English prototype. It had no popular assembly, and its main officers, lieutenant, sheriff, coroner, and justices of the peace, were appointed by the governor. In the middle colonies a mixed system of county and township government grew up, and this system spread most widely as the population moved westward and opened up new lands. Distinct survivals of the three systems of local government remain to this day. Municipal government was begun in the colonial period by the incorporation of twenty boroughs under charters granted by the governors. These boroughs were governed after the English fashion by a council of a single house, composed of a mayor, a small group of aldermen, and a larger number of councilors. The principle of local autonomy was everywhere strongly asserted and upheld.

Colonial politics followed the same general lines of cleavage as English politics. As early as 1645 John Winthrop<sup>20</sup> found two distinct parties in his colony. He said: "Two of the magistrates and many of the deputies were of the opinion that the magistrates exercised too much power, and that the people's liberty was thereby in danger; other of the deputies, being about half, and all the rest of the magistrates were of a different judgment, and that authority was overmuch slighted, which, if not timely remedied, would endanger the Commonwealth and bring us to a mere democracy."<sup>21</sup>

<sup>20</sup> In his notable speech on "Liberty."

<sup>21</sup> Winthrop, *History of New England* (ed. 1853), II, 277.



Americans were Whigs or Tories as in England. As John Adams said: "In every colony divisions have always prevailed. In New York, Pennsylvania, Massachusetts, and all the rest, a court and country party has always contended; Whig and Tory disputed sharply before the Revolution and in every step during the Revolution."<sup>22</sup> Numerous tendencies of American politics had their origin in the colonial period, some of them being derived from England where they later ceased to exist. The American practice of requiring a representative to be a resident of his district was an old idea in English politics. The ancient King's writ, confirmed by a statute of Parliament, required that only resident Burgesses could be elected to Parliament. This law became a dead letter in England, but was transplanted to America and survived. The idea of voting by ballot was also urged by several of the political theorists of seventeenth century England, notably by James Harrington, but was not adopted. Its use was fostered in the colonies by the difficulties of travel and by the desire to avoid personal attendance at elections. The New England elections came to be known as "proxings" because votes might be given by proxy by means of voting papers. Many persons in the colonies objected to the use of the ballot and in some colonies it was forbidden. The idea of a party ticket was especially opposed. John Adams, in 1794,<sup>23</sup> spoke of the interference with freedom of elections caused by his opponents sending out agents with printed votes.

The beginnings of parties and of party organization also appeared in the colonies and followed English methods. There was a "court" party, composed of the aristocratic faction in control of the government of the colony and in sympathy with the King's representative, and a more democratic colonial party, which supported the assembly. By the middle of the eighteenth century the terms *Tory* and *Whig* were applied to these factions because of an avowed or suspected sympathy between them and the corresponding parties in England. This line of cleavage was important in the contest for independence. The more natural and permanent alignment was that growing up between the propertied classes of the coast region, who controlled colonial affairs, and the growing population on the western frontier, who opposed the restricted franchise and the inequitable representation that excluded them from any important share in government. This cleavage led to the formation of parties on

<sup>22</sup> *Works*, X, 23.

<sup>23</sup> *Ibid.*, I, 474.

distinctly American issues after independence and has been important in American political thought to this day.

Party organization, however, developed slowly. After 1760 many reform associations were organized in England and mass meetings were held to arouse opposition to the policy of George III. To keep up communication among these groups, committees of correspondence were set up. The American Whigs were in sympathy with these movements. Samuel Adams, then in London, wrote to America in 1771, proposing that similar committees be organized in the colonies, and such action was soon taken. These bodies were the forerunners of the state committees of the parties. The caucus also made its appearance early in colonial history, small groups of leading men meeting to select candidates for office. Three rich merchants were said to control Boston politics, a half-dozen families to dominate Connecticut, and the great families of Livingston, Clinton, and Schuyler to determine the politics of New York.

The social and political contrasts between the colonial groups should not be overemphasized. Such contrasts were important: the self-governing town of Puritan New England, with church and school the outstanding institutions, and with small farming and commerce the chief economic pursuits; the Cavalier South, with its Anglican aristocracy, its broad plantations, and its constant social intercourse with England; the cosmopolitan middle colonies, varied in religion, turbulent in government, and keen for trade. Facilities of travel and intercourse were undeveloped; intense antipathies were cherished by people of one locality against those of another, and these prejudices had to be reckoned with. Nevertheless, in essentials the colonies were similar. They spoke the same language; they adapted to their needs the same common law; they treasured the same traditions of civil liberty. They insisted upon freedom of speech, criticism of government, and the right to control their own taxation. As Burke said, they were animated by a "fierce spirit of liberty." The distance from England, their freedom from consistent control by the home government, the need of new and ingenious methods of developing their own resources, and the pressure of defense against the Indians intensified the radical traits of the early settlers. Free from the aristocratic organization of the Old World, from its imposing religious organizations, and from its dynastic rivalries, they ceased to be European colonists and became Americans.

Democratic ideas gained steadily during the colonial period.

The liberal governmental systems of Connecticut and Rhode Island were influential. Local self-government, especially that of the New England town, was a splendid training-school for democracy. The course of events in England itself, where Parliament was steadily winning its fight against royal prerogative, could not but affect the situation in the New World. Self-direction became a habit in the colonies, not so much from deliberate plan as from the facts of their situation and settlement. They brought with them the local self-government of seventeenth century England. They were separated from the mother country by three thousand miles of ocean, and communication and reply required at least three months. They were not founded and maintained by the government of England, dependent upon royal support, but were adventures of private initiative. Besides, such English authority as was exercised in the colonies was executive in character, delegated to the governor; whereas the colonists looked to their elected assemblies as the controlling institution in their political life. The immigrants to America represented the more dissatisfied and enterprising members of the English people. There was no hereditary aristocratic class in the colonies and less inequality in the distribution of wealth. The sturdy adventurers who began the settlement of the western lands, after the manner of frontier population everywhere, were particularly inclined to democratic sentiments. They early developed a hostile disposition toward the rich merchants and planters of the coast region, who lent them money at high interest rates and who were unresponsive to their desire to extend farther the colony's territories. The relative industrial and social equality of the colonists prepared their minds for the ideas of political equality, which needed only favorable opportunity for speedy development.

In each of the colonies there was a marked political antagonism between the population of the coast towns and the settlers of the interior. Racial and religious differences and distance contributed to this dislike, but the main reason was economic. The seaboard cities were controlled by merchants and capitalists; the people of the backwoods were usually in their debt. Besides, the frontiersmen, because of their slender means and more equal distribution of property, were more radical democrats, in contrast to the aristocratic attitude of the older settlements. The questions of paper money and the apportionment of taxes were constantly at issue. The debtor class of the back country, where specie was scarce, favored the issuing of fiat money; the eastern members of the legislature opposed

this policy and insisted that debts be paid in sound currency. The inland farmers constantly complained that they were forced to pay more than their proper share of taxes, and that they did not have the share in government to which their numbers entitled them. Several times the frontiersmen took up arms in vindication of their opposition, notably in Bacon's Rebellion in Virginia, in the Regulators' uprising in North Carolina in 1770, and, during the Confederation, in Shays's Rebellion in Massachusetts.

The ablest early spokesman of the agrarian democracy was Benjamin Franklin,<sup>24</sup> a forerunner of Jefferson in his belief that government should remain close to the people. Franklin was the first American to abandon the traditional Mercantile school and to ally himself with the rising school of laissez-faire. During his stay abroad Franklin came in close contact with the body of physiocratic writings, and he shared their belief that agriculture was preferable to commerce and manufacturing, and that governmental interference should be reduced to a minimum. As early as 1729 he published a pamphlet entitled *A Modest Inquiry into the Nature and Necessity of a Paper Currency*, aligning himself with the agrarian debtors against the town merchants and money lenders. In his political philosophy, Franklin advocated unrestricted manhood suffrage, annual parliaments, and a single-chamber legislature. He opposed the system of checks and balances and favored a simple, democratic form of government. The principle of federation he approved thoroughly, believing in a federal union of the colonies and a larger federated British Empire.

The center of the democratic movement during the colonial period was the conflict between the governor and the colonial assemblies. English precedent in the seventeenth century and the local desire to escape administrative control by the home government furthered this contest. In a letter written in 1754 Benjamin Franklin complained that royal governors often came to the New World merely to make their fortunes, and that royal officers in the colonies were subservient to the governors who fed them. The colonial assembly, however, held the purse strings. Governors frequently wrote of their inability "to please the King's ministers at home and a touchy people here," and complained that they could not "meet the assembly without danger of exposing the King's authority and myself to contempt." The assembly steadily gained at the expense of the governor, secured control of finances, took upon itself the

<sup>24</sup> *Works*, ed. by J. Bigelow (14 vols., 1889).

direction of public affairs, and replaced appointive officials by those of its own selection. The English Board of Trade complained to Governor Pownall that in Massachusetts "almost every act of executive or legislative power, whether it be political, judicial, or military, is ordered and directed by the votes and resolves of the General Court, in most cases originating in the House of Representatives."<sup>25</sup> This conflict became the rallying point around which tendencies of popular government and independence gathered, gave the colonists experience in practical politics, and prepared the way for the American Revolution. In fact, toward the end of the colonial period, the colonial assemblies had virtually become their own masters. The revolution had taken place; it remained only to proclaim it to the world. Because of the English tradition of parliamentary opposition to royal prerogative, and because of colonial experience in the opposition of the assembly to the colonial governor, it is easy to understand the attitude of the early Americans in their fear and distrust of executive power and their confidence in popularly elected legislatures.

### 3. POLITICAL THEORY IN THE COLONIES

The Puritan principles of government, as expressed in the writings of Milton, Sidney, Hooker, Harrington, and Locke, were familiar to the colonists. In the mother country these ideas exerted comparatively little influence upon the actual constitution. In the colonies they were further developed and bore fruit in the establishment of a form of government based upon their essential principles. The English idea of civil liberty, handed down in the tradition of Magna Charta, and in the Petition of Right and the Bill of Rights of the seventeenth century, was also transplanted to America; and careful provision for the protection of civil rights was made by the colonists in such documents as the Body of Liberties in Massachusetts Bay (1641) and the Fundamental Orders of Connecticut (1639).

The idea of a law of nature, based upon universal reason, also appealed to the colonists. In struggling for freedom of conscience they had become accustomed to look beyond the positive laws of the state and to appeal to the natural law and to their natural rights. William Penn<sup>26</sup> believed that there were certain fundamental laws,

<sup>25</sup> E. B. Greene, *The Provincial Governor* (1898), 194.

<sup>26</sup> *The People's Ancient and Just Liberties Asserted* (1673).



eternal and unchangeable. Superficial laws, made to meet temporary needs, might be abrogated for the good of the state, but the fundamental laws of nature were not subject to human alteration. John Wise stated that "wise and provident nature, by the dictates of right reason, excited by the moving suggestions of humanity, and awed by the just demands of natural liberty, equity, equality and principles of self-preservation, originally drew up the scheme."<sup>27</sup> The House of Representatives in Massachusetts quoted "the great Mr. Locke" to the effect that there was "a law antecedent and paramount to all positive laws of men."

The theory of the sovereignty of the people was frequently expressed. Roger Williams held that "the sovereign, original, and foundation of civil power lies in the people," and that "a people may erect and establish what form of government seems to them most meet for their civil condition."<sup>28</sup> Thomas Hooker, a Congregationalist minister, in a sermon preached in 1638, stated that the foundation of authority lies in the free consent of the people, and that "the choice of public magistrates belongs unto the people by God's own allowance."<sup>29</sup> The code of law drawn up in 1647 for Providence Plantations declared "that the form of government established is democratical, that is to say, a government held by the free and voluntary consent of all or the greater part of the free inhabitants."<sup>30</sup> The constitution of the United Colonies of Windsor, Hartford, and Wethersfield, drawn up in 1639, was based upon the doctrine of the sovereignty of the people, the supreme power residing in a general court elected by the freemen of the towns. William Penn, influenced by the doctrine of the Levelers in England, frequently stated the doctrine of popular sovereignty and wrote that "the representative depends upon the people, as the creature subsists by the power of its creator. Every representative may be called the creature of the people, because the people make them, and to them they owe their being."<sup>31</sup>

The orthodox theory of the Puritans was less democratic. They believed in spiritual liberty and in the natural rights of man. They brought with them the traditional rights of Englishmen, which they were careful to preserve. The political rights in which they

<sup>27</sup> *Vindication of the Government of New England Churches* (ed. of 1772), 21.

<sup>28</sup> *Bloudy Tenent of Persecution* (1644).

<sup>29</sup> *Collections of Connecticut Historical Society*, I, 20.

<sup>30</sup> *Records of Rhode Island Colony*, I, 156.

<sup>31</sup> "England's Present Interest Considered," in *Select Works*, 382.

were most interested, however, were not the rights of the individual, but the independence of their corporation or society. Their great aim was to secure a form of civil government under which their religious system could be best maintained. They believed that men, as sinners, were equal before God, but that as God's elect, assured of salvation, the Puritans occupied an aristocratic preëminence. They showed no great enthusiasm for political equality, and were not given to doctrinaire ideas about popular sovereignty. Even in the church it was their practice to "dignify the congregation" in the assignment of sittings; and John Cotton said that he "did not conceive that God did ordain democracy as a fit government either for Church or Commonwealth." He found sanction in the Bible for life tenure for the higher magistrates.

The tendency of the colonists to demand increasing popular control was severely criticized in some of the colonies. Governor Spotswood of Virginia denounced those who "inflamm[e] the common people with notions of the ruin of their liberties" and referred to the "mobish candidates who outbid the gentlemen of sense and principles."<sup>32</sup> Even in Pennsylvania, reference was made to the fact that "some people's brains are as soon intoxicated with power as the natives are with their beloved liquor, and as little to be trusted with it." Penn himself criticized the excess of vanity of those who, having achieved some power, thought "nothing taller than themselves but the trees."<sup>33</sup>

The idea of a social contract<sup>34</sup> as the basis of the state had an especial meaning to the colonists. In defense of their form of church organization they frequently asserted that contract is the method by which all associations are formed. Frequent references were made to the covenants of the Old Testament<sup>35</sup> and a close relation was held to exist between the "church covenant," by which an ecclesiastical congregation was set up, and a "plantation covenant," by which a colony was formed. The congregation of John Robinson entered into a covenant before leaving England for Holland.<sup>36</sup> The colonists on the *Mayflower* drew up a compact

<sup>32</sup> "Spotswood Letters," in *Virginia Historical Collections, New Series*, II, 134.

<sup>33</sup> "Penn-Logan Correspondence," in *Memoirs of the Historical Society of Pa.*, IX.

<sup>34</sup> The idea of a social contract had been worked out in the church controversies of the fifteenth and sixteenth centuries. It was clearly stated by Richard Hooker in his *Laws of Ecclesiastical Polity* (about 1594).

<sup>35</sup> *II Kings*, XI, 17; *Deut.* XXIX.

<sup>36</sup> See Mather's *Magnalia*, Bk. I, Ch. II.



for the establishment of a body politic before landing in America. They agreed to "covenant and combine ourselves together into a civil body politic, for our better ordering and preservation." The Salem colonists in 1629 entered into a holy covenant by which a church-state was formed. The platform of church discipline of 1649 declared that the covenant was the form by which men formed society and established authority. Richard Mather<sup>37</sup> stated that "all relations which are neither natural nor violent are entered into by way of covenant." Primarily applied to ecclesiastical relations, the theory of social contract was carried over into political relations, and became an accepted part of American political thought during the period of the Revolution and the formation of the Constitution.

The political theory of the colonists was well expressed in the writings of Thomas Hooker,<sup>38</sup> a Connecticut divine, and of John Wise,<sup>39</sup> a minister of Ipswich. Hooker anticipated the social contract theory as later worked out by John Locke. He argued that men were essentially equal, but that, without government and law, distraction and confusion prevailed. He believed that authority was based upon a contract, preferably explicit and written, in which the people mutually agreed to subject themselves to the rule of the whole. The people, however, retained the right to set bounds and limitations to the power of the magistrates they set up, and the right to proceed against officers who exceeded their powers. The right of revolution was thus foreshadowed.

These ideas were elaborated by John Wise, who applied the principles of natural law to the constitution of the Congregational churches. He believed that man lived originally in a state of nature, being free and equal, and owing obedience to no one but God. Following Grotius and Pufendorf, from whom he drew many ideas, he held that man was essentially sociable, loving his fellows, but guided by self-love and the instinct of self-preservation. In the state of nature, natural law, dictated by right reason, formed the principles of justice and morality. Civil government was formed by a series of voluntary contracts. Men first covenanted

<sup>37</sup> *An Apologie of the Churches in New England for Church Covenant* (1639).

<sup>38</sup> *A Survey of the Summe of Church Discipline* (1648).

<sup>39</sup> *A Vindication of the Government of New England Churches* (1717; new ed. 1772). Other important works were: John Cotton, *The Way of the Churches of Christ in New England* (1645) and *The Way of Congregational Churches Cleared* (1648); Richard Mather, *Church Government and Church Covenant Discussed* (1643); John Davenport, *A Discourse About Civil Government* (1663).

to form a society. Then they contracted to set up a particular form of government. Lastly, they contracted with their rulers: the people agreeing to yield faithful obedience; the rulers, to care for peace and common welfare. Original sovereignty was in the people, who might establish whatever form of government was best suited to them, and this original power always reverted to them in case they wished to change their government. He believed that democracy was the best form of government, and that the end of government was to promote the happiness of all and to protect the rights of men in life, liberty, estates, and honor. His work became a political textbook for the colonists. It contained the leading political principles which were embodied later in the documents of the Revolution. A new edition issued in 1772 was widely read, especially by the most influential men in New England.

These doctrines of natural law and social contract seemed to be especially applicable to conditions in America. The colonists who came to America found themselves in a state of nature. By agreement they set up a government and chose magistrates. At first all shared in government; later a representative system was found necessary. Popular sovereignty was thus delegated to certain agents. The contract theory seemed to fit exactly the circumstances under which political institutions in America arose.

The political ideas of the colonists were also influenced by the constitutions prepared for the proprietary colonies of Pennsylvania, New Jersey, and Carolina. The New England colonies were theocracies in which civil matters were determined ecclesiastically. They started as corporations and gradually achieved self-government by transferring the activities of the company from England to the colonies. On the other hand, the proprietary colonies were primarily secular, and constitutions were made for them at definite times by definite individuals. In this way a particular scheme could be easily introduced. The framework of government set up for them followed in many respects the ideas of James Harrington<sup>40</sup> in England. His belief in a written constitution, in the extension of the elective principle, in the separation of powers, in indirect elections, in short tenure and the multiplication of offices, in rotation, the use of the ballot, and popular ratification of constitutional legislation was far in advance of the theory and practice of England, but was incorporated into the political thought of America. Harrington's doctrine that political power follows property,

<sup>40</sup> See his *Oceana* (1656).

especially in land, was deliberately followed in the Fundamental Constitutions<sup>41</sup> prepared for Carolina. The people were divided into classes, and an aristocratic system in which power was retained by the great landowners was established. It reflected the Whig ideal of a perfect order for the New World, an order composed of an aristocracy resting upon servile labor held in check by a body of yeomen. It aimed to "avoid a numerous democracy" and to create an administration "most agreeable to the monarchy." The scheme of government set up was an attempt to put into practice the ideals of Harrington's *Oceana*, stripped of some of its democratic features. This scheme, while short-lived, enjoyed much fame, and an enthusiastic admirer wrote that "empires will be ambitious of subjection to the noble government which deep wisdom has projected for Carolina."<sup>42</sup>

In the colonies of Pennsylvania and New Jersey, Penn was able to carry out his political experiments. Fresh from the study of the great utopias of More and Harrington, Penn had dreams of a model state and was eager for the opportunity to apply his ideas. In West Jersey the land was divided according to a decimal system, special stress was laid upon the fundamental nature of a constitution, and special machinery was devised to guard its sanctity.<sup>43</sup> Vote by ballot<sup>44</sup> was used so that every man might "freely choose according to his own judgment and honest intention." The Fundamental Constitutions of East Jersey, agreed upon by the proprietors in 1683, were the most complete attempt to introduce the ideals of the *Oceana* in the colonies. Its system of land distribution as the basis of governing power was almost an arithmetical application of Harrington's theory of the balance of property. Rotation in office was provided for, and selection by lot was used at certain stages of the electoral process.

In Pennsylvania the same ideas were applied, but with a more democratic basis; and for a long time the government of Pennsylvania was held up as a model, both in Europe and in America. Voltaire wrote of it with great admiration; Montesquieu compared Penn to Lycurgus; and Jefferson called him "the greatest

<sup>41</sup>It is a matter of dispute whether this document was prepared by John Locke or by the Earl of Shaftesbury, both of whom were familiar with Harrington's ideas.

<sup>42</sup>Bancroft, *History of the United States*, I, 420.

<sup>43</sup>A Board of Censors, composed of seven honest and reputable persons, might accuse of treason any one who attempted to introduce alterations into the constitution.

<sup>44</sup>The term *ballot* was brought into common use by Harrington.

lawgiver the world has produced; the first in either ancient or modern times who laid the foundations of government in the pure and unadulterated principle of peace, of reason, and of right.”<sup>45</sup> Like the imaginary Cromwell of the *Oceana*, Penn wished to efface himself for the public good. His constitution provided for annual elections, rotation in office, and the use of the ballot. The idea of separating the debating body from the voting body, which Harrington had favored, was partially worked out in the relation of the Council to the Assembly; and a Board of Censors to safeguard the permanence of the constitution was created. Harrington had preceded his constitution by an academic discussion of the theory of government upon which it was based, and the custom of prefixing a theoretical preamble to the colonial constitutions came in during this period. Benjamin Franklin was of the opinion that the first constitutions of Pennsylvania “savored very strongly of Harrington and his *Oceana*.”<sup>46</sup>

The attempts to introduce Harrington’s ideas in the colonies were not entirely successful. The fantastic scheme for the Carolinas was short-lived, and changes were soon made in Pennsylvania against which Penn protested in vain. In some respects, however, Harrington’s influence survived. “The belief in property qualifications which held sway so long in America must have been supported by the scientific basis which he gave to the power of the landowners. The definite conception of civil and religious liberty must be attributed in part to his theories. And the American belief in the sanctity of written constitutions must have been partly inspired by his faith in the rule of laws, and his cherished opinion that if only institutions are sufficiently good they stand in no need of change.”<sup>47</sup> Harrington’s influence was felt again at the time of the American Revolution, and many of his ideas were revived in the theory of the Jacksonian democracy.

The interest of America in law and legal study, and the important part in politics played by the legal profession,<sup>48</sup> began early in colonial history. Next to religious books, treatises on law and political subjects were most in demand. Edmund Burke, in speaking of the colonies, said: “In no country, perhaps, in the world is the law so general a study. The profession itself is numerous and

<sup>45</sup> Hazard, *Register*, XVI, 48.

<sup>46</sup> Benjamin Franklin, *Historical Review of the Constitution and Government of Pennsylvania*, 13.

<sup>47</sup> H. F. Russell Smith, *Harrington and His Oceana* (1914), 183.

<sup>48</sup> A. L. Lowell, *Essays on Government* (1889), Chap. III.

powerful, and in most provinces it takes the lead. The greater number of deputies sent to the Congress were lawyers. But all who read, and most do read, endeavor to obtain some smattering in that science. I have been told by an eminent bookseller, that in no branch of his business, after tracts of popular devotion, were so many books as those on the law exported to the plantations. The colonists have now fallen into the way of printing them for their own use. I hear that they have sold nearly as many of Blackstone's *Commentaries* in America as in England."<sup>49</sup> Works on natural law were especially popular, the colonists being familiar with the writings of Grotius, Pufendorf, Locke, and Vattel. The results of this study were shown later in the arguments of the colonists in upholding their rights against the motherland. Systematic political theory played but little part in the colonial period. With the approach of the Revolution a much greater use of philosophical doctrine as the basis for political action appeared in the speeches and writings of American leaders.

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## CHAPTER IV

### POLITICAL THOUGHT OF THE AMERICAN REVOLUTION

#### 1. NATURE OF THE AMERICAN REVOLUTION

Many causes of the American Revolution were remote, many were latent in the actual situation that resulted from the distance of the colonies from England. The more immediate causes included the interplay of opposing ideals, of mutual prejudices, of personal antagonisms, and especially of clashing economic interests. The spirit of revolution was gradually arising during the period 1760-1776. As John Adams wrote: "Revolution was effected before the war commenced. The Revolution was in the minds and hearts of the people." Local circumstances compelled the colonists to take the initiative in matters of internal order and security, defense, inter-colonial relations, and in dealings with the French, Dutch, and Indians. A colonial consciousness, based upon ideas divergent from the imperial system, gradually emerged; and the conception of a separate and equal station, developing at first in objective conditions, was gradually rationalized in political theory. The military struggle was an armed attempt to impose the views of the revolutionists upon the British government and upon that part of the colonial population that upheld British policy.

After the Peace of Paris in 1763, British statesmen felt it necessary to integrate the empire more closely for defense against France and Spain and against the alien populations that had been added to the empire by conquest. They also wished to remedy the unsystematic methods of colonial administration and to enforce more strictly many laws that were being ignored by the colonists. Accordingly, a threefold program was determined upon. First, the trade and navigation acts were to be vigorously enforced. These statutes required the colonies to export certain staple products to Great Britain or to British colonies only, and to import most of their finished goods from the mother country.<sup>1</sup> Second, British troops were to be stationed in the colonies as part of a permanent

<sup>1</sup> T. Pownall, *The Administration of the Colonies* (1764).



system of imperial defense. Third, revenue was to be raised in the colonies by taxation for the purpose of meeting part of the cost of the new arrangements. This policy came at a time when the colonies felt less need for British protection, because of the removal of the French menace to their frontiers, and at a time when the growing wealth of the colonies and their political and military experience led them to take a decidedly independent attitude. The new imperial policy involved new tax burdens, the loss of commercial profits, and a limitation on colonial self-government.

In the colonies the new imperial policies met determined resistance. The colonists claimed the right to govern and tax themselves, and viewed the sending of British troops as an effort to overawe them.<sup>2</sup> In the Boston town meeting in May, 1764, Samuel Adams instructed the delegates to the General Court to rebuke that body for not taking notice of "the intention of the British Ministry to burden us with new taxes." Two months later, James Otis,<sup>3</sup> invoked "the united application of all who feel aggrieved" to seek redress. The effort of George III to convert the British government into a personal autocracy met determined resistance in England also, and many leaders in Parliament identified the efforts of the colonies to preserve home rule with their own struggle against the attempt of the King to restore royal prerogative.

The population of the colonies was divided into three fairly distinct groups, differentiated by geographic location, by economic interests, and by political ideals. The commercial colonies of the northern coast comprised one group; the agricultural colonies of the southern tide-water region formed another group; the frontier settlements of the west formed the third. The wealth of the commercial colonies was based upon shipbuilding and the carrying trade, much of which was carried on with the West Indies in violation of the British Navigation Acts. The merchants of that section resented the new imperial policy which interfered with their profitable trading operations, but they realized the advantages of remaining in the empire, and had little sympathy with the idea of independence or with the growth of democratic sentiment. They assumed the lead in the spirit of protest because they were

<sup>2</sup> See the "Hyperion" articles written by Josiah Quincy, 2nd, in the *Boston Gazette* (1768).

<sup>3</sup> In his *Rights of the British Colonies Asserted and Proved* (1764). See also his *Vindication of the Conduct of the Representatives of Massachusetts Bay* (1762); *Considerations on Behalf of the Colonists* (1765); *A Vindication of the Colonies* (1765).

most seriously affected at first by the new policy of the British government. The laboring and proletarian elements of the northern colonies, whose interests were dependent upon the prosperity of the merchant class, supported their protests in less restrained mass meetings and mob demonstrations.

In the southern colonies colonial capital was invested in agriculture, while commerce was controlled by British merchants. Under the lax system of plantation marketing, the American planters were usually in debt to the British merchants, and the efforts of the colonial legislatures to pass bankruptcy acts or to interfere with the claims of the British creditors were regularly vetoed by the Crown. This situation led the southern colonies to sympathize with the attitude of opposition in the New England colonies, and to resent any further parliamentary interference in American affairs. The pioneers on the western frontier, largely of German and Scotch-Irish descent, were economically self-dependent and zealous for popular rights and self-government. The arguments against England on the grounds of non-representation in Parliament and the unjust burden of taxes were familiar to them, because they had faced the same situation in colonial affairs. While they were slower in taking part in the Revolution, and in some cases remained Loyalists, they added to the controversy a moral fervor and a bold democratic philosophy which gave an impetus to independence and to the establishment of republican government.

There was also a religious aspect to the opposition of the colonists. The majority of them were dissenters, who disliked the Church of England and who opposed the growing power of the Episcopal clergy in America. The Episcopal clergy were ordained in England and supported the royal government in the colonies. The belief that the English government planned to send bishops to America aroused bitter feeling. John Adams stated that the dread of an established church in America contributed as much as any other cause to the opposition to the mother country. Congregational ministers took an active part in arousing colonial discontent, and infused a considerable amount of politics into their sermons. Creswell, the Tory, complained that "the few that pretend to preach are mere retailers of politics, sowers of sedition and rebellion." The Scotch-Irish Presbyterians were particularly active in support of independence, and the terms Presbyterian and Episcopalian were often used as synonymous with Patriot and Loyalist.

The alliance of the Presbyterian and the Congregational sects in 1764 undoubtedly had a political as well as a religious significance.

In the American Revolution, as in most revolutions, control passed from the hands of the moderates into those of the radicals. In practically every colony the moderate group,<sup>4</sup> while protesting against the British policy, desired compromise, proposed a plan of colonial and imperial union, and hoped to avoid further controversy. The radical group<sup>5</sup> opposed compromise and insisted on parliamentary recognition of colonial home rule. In the First Continental Congress the radicals, "Sam Adams with his crew," supported by the delegates from the back-country provinces, were in the majority. They drew up a statement of grievances, adopted resolutions not to import from or export to Great Britain, and arranged for local committees to enforce these regulations. Many colonists thought this action illegal and inexpedient, and considered the self-constituted committees to be as tyrannical as the British government. Control passed increasingly into the hands of the common people, "unimportant persons," "mechanics and country clowns," as their opponents called them. Those who opposed separation complained that "a set of men whom nobody knows—are attempting to hurry you into a scene of anarchy." The Second Continental Congress, also controlled by the more radical element, issued a "Declaration of the Causes and Necessity of Taking up Arms,"<sup>6</sup> gradually assumed the position of a *de facto* government, and took the final step in revolutionary authority of proclaiming the colonies "free and independent states." All shades of opinions were represented in the colonies, but the course of events, especially after the Declaration of Independence, sepa-

<sup>4</sup> Among the leaders of the moderate or Whig group were John Dickinson of Pennsylvania and Daniel Dulaney of Maryland. See *Writings of John Dickinson*, ed. by P. L. Ford (3 vols., 1895); D. Dulany, *Considerations on the Propriety of Imposing Taxes in the British Colonies for the Purpose of Raising a Revenue by Act of Parliament* (1766). From this pamphlet Pitt drew arguments for his speech on the repeal of the Stamp Act.

<sup>5</sup> The leader of the radicals was Samuel Adams. See his *Writings*, ed. by H. A. Cushing (4 vols., 1904-1908). Adams believed in actual popular sovereignty, meaning by the people, not the wealthy and cultured minority to whom the Whigs appealed, but the mass of men—yeomen, tradesmen, and mechanics. He rejected every form of "mixt government," whether of King, Lords, and Commons, or of constitutional checks and balances, and upheld a pure democracy based on the town meeting. Later he fought against Federalistic consolidation and opposed the Constitution as an undemocratic instrument. He supported the movement to secure a Bill of Rights, welcomed the French Revolution, and in the later years of his life viewed the election of Jefferson as a return to democratic principles.

<sup>6</sup> W. MacDonald, *Select Charters*, 374-381.

rated opinion into two camps, Patriots and Loyalists. Many of the moderates reluctantly, though faithfully, supported the Revolution. Many others remained loyal to England, joined the Tories, and large numbers left the country. The effective organization and aggressive tactics of the radicals organized the great body of indifferent opinion into support of their policies.

The Revolutionary movement, therefore, was not only a conflict with Great Britain, but also a revolt against aristocracy and privilege in the colonies themselves. To a considerable extent the privileged classes remained loyal to the British government. The "people," including the small farmers, tenants, artisans, and laborers, were demanding a share in the government. The forces of democracy were growing stronger and more articulate, the lower classes were taking part in political discussion, and were prominent in the local organizations and later in the army. The Revolution gave an impetus to the democratization of American society and politics. The common people not only wanted colonial home rule but also desired to rule at home. They risked little by change, and insisted upon the doctrines of the equality of man and of the dependence of government upon the consent of the governed. Shortly after the Revolution the barbarous criminal codes of the colonies were modified, the heavy quit rents paid to King and proprietors were abolished, the large estates confiscated from the Tories were divided into small holdings, and the system of entail and primogeniture was broken down. The American Revolution marked the opening of a liberal and humane movement. It was a social, economic, and intellectual transformation, as well as a war for independence and self-government.

The Revolution also gave a marked impetus to the separation of church and state in America. In New England the established church was not immediately threatened, because it was the church of the majority and most of its clergy and members were on the American side, while its opponents were also opponents of the Revolution. In colonies where the church established by law was the Episcopal church, disestablishment was effected without much difficulty except in Virginia. The sects that grew most rapidly during the period were those whose theology was based upon the idea of the natural equality of mankind. The denominations whose traditions required an educated ministry were not adapted to the conditions of frontier settlement. The constitution-making spirit was in the air, and one denomination after another drew up new

forms of organization between the years 1783 and 1792. In creating the early state constitutions the clergy took active part.

The Revolutionary period left certain important effects on American political policy, both domestic and foreign. For many years after the war, military men were accorded a high place of social and political importance. They had successfully begun the history of a nation and were felt to be entitled to an exceptional share of glory and of influence in public affairs. One of the purposes of the Society of Cincinnati, formed by the officers of the army, was to deliberate in secret on public questions. Against their purpose much public opposition was aroused,<sup>7</sup> the mass of the population being bitterly opposed to a standing army and the formation of an aristocratic class. Franklin, Samuel Adams, and John Adams were among those who raised a warning voice in opposition to the order.

The Revolutionary period also marked the beginning of the prominent part played by lawyers in American political life. In the colonial period the intellectual leaders were drawn from the clergy, political arguments were fortified by Biblical lore, and secular issues were discussed in the light of a divine purpose. The legal profession was not held in high repute, one Maryland chronicler giving thanks that there was no need for the factious members of the profession in that colony. In the latter part of the eighteenth century, however, as society became more complex, lawyers grew rapidly in numbers and influence, and took prominent part in the town meetings and assemblies. A large proportion of the members of the Continental Congresses and of the Constitutional Convention was drawn from the legal profession. Lawyers began to assume leadership in all questions of public interest, and gave to the beginnings of American political life the peculiar legal and constitutional philosophy that has marked American political thought to this day. Before the period of the Writs of Assistance and the Stamp Act, colonial writing had been mainly theological in nature. After 1765 political treatises advocating "resistance to tyrants" were eagerly devoured.

Gratitude for French aid was reflected in the imitation of French fashions and manners, and in the popularity of the French language and of French books. The College of William and Mary established a chair of French in 1779; Harvard followed in the

<sup>7</sup> See the popular contemporary novel, *Modern Chivalry*, by H. H. Brackenridge.



next year. The early period of the French Revolution was viewed with enthusiasm in the United States. Paine wrote that "the principles of America opened the Bastille," and many American citizens believed that the movement in France reflected their own liberal political ideas. With the outbreak of the Napoleonic Wars, the existence of a widespread sentimental attachment to France made the question of our proper attitude in that war an issue in national politics. Even in the recent World War it was possible to arouse enthusiasm by references to Lafayette.

## 2. POLITICAL THEORY OF THE AMERICAN REVOLUTION

The political theory of the Revolutionary period was not put into systematic form in any single treatise. It appeared in discussions from platform and pulpit, in newspapers and pamphlets, in the resolutions and declarations adopted in legislative assemblies, conventions, and less formal bodies, and in the addresses of the colonists to the home government. The writings and speeches of such men as Otis, Henry, Jefferson, John and Samuel Adams, Dickinson, Paine, and Hamilton furnish an important source of information. The constitutions adopted by the states put into legal form many of the prevalent ideas concerning government. The leading men of the period discussed incessantly the problems of colonial policy, of constitutional law, and of political theory; but they viewed these problems, not as detached scholars and philosophers, but as partisans and promoters of a revolutionary program. The colonists had textbooks of revolution in the writings of seventeenth-century Englishmen, especially John Locke, which sustained the right of citizens to overthrow governments that took their property without their consent. The American philosophers of revolt found ready-made the necessary dogmas; they had only to use English precedent and rhetoric to forge their arguments. As the colonies grew in importance and the controversy with the mother country increased in bitterness, the literature of the new politics swelled in volume. In its earlier period political thought was largely destructive and critical; later, in the work of constitution framing and creating a form of union, it became more constructive in nature.

The political theory of the Revolutionary period was characterized by a shift of emphasis from one line of argument to another. In the beginning the colonists based their liberties mainly on their

charter grants. Abandoning this, they appealed to their constitutional rights as Englishmen and argued over their relation to King and to Parliament and over questions of representation and taxation. When their legal doctrines became untenable, they fell back upon the philosophic theories of the rights of man, the social contract, and the right of revolution. At first they were sincerely devoted to their membership in the British Empire and to the principle of kingship. Later they became enthusiastic for independence and for the republican principle of government. These broad generalizations outline the main tendencies in the political thought of the period.

At first the resistance of the colonists was based mainly on arguments as to their legal and constitutional rights and status in the imperial system. They placed their reliance in the beginning on their rights under their charters.<sup>8</sup> After 1765 they based their protests upon their wider rights as Englishmen, using the Whig argument that the English constitution, founded on natural law, was a free constitution, guaranteeing to all its subjects, wherever they might be, the fundamental rights incident to free government. In the final phase of the legal controversy, they based their arguments on the constitutional nature of the British Empire. They claimed that under their charters the colonists were entitled to all the freedom and privileges of native-born Englishmen. They brought with them to America the rights for which Englishmen had long struggled at home. The colonists, they said, did not leave their native land and undergo the hardships of conquering the wilderness for the sake of losing their freedom. Among these rights they emphasized especially that of controlling their own finances, and argued that Parliament had no power to levy taxes in America because Americans were not represented in Parliament. The colonists argued that the policy of Parliament in imposing taxes upon them was not merely unjust and inexpedient, but unconstitutional because contrary to the legal relation between the home government and the colonies.

It was held by the colonists that they owed allegiance to the King, from whom they had received their charters, and not to Parliament. They argued that they occupied the position of distinct states in the Empire, held together by common allegiance to the Crown. As John Adams put it: "The Fealty and allegiance of the Americans is undoubtedly due to the person of King George

<sup>8</sup> Jeremiah Dummer, *Defence of the New England Charters* (1721).



III, whom God long preserve and prosper.”<sup>9</sup> They believed that the British Parliament was the lawmaking body for Great Britain only, and that the colonial assemblies occupied a coördinate position, with authority to legislate for the colonies. Accordingly, the British Parliament had no constitutional authority to levy taxes in the colonies. They admitted the power of Parliament to control colonial trade, but held that such authority was based upon the consent of the colonies, and even compared the Acts of Trade to commercial treaties between the colonies and Great Britain. A distinction was sometimes made between internal and external taxation, the colonists admitting the right of the mother country to control external trade, but denying its right to impose an internal tax in the colonies.

These doctrines were ably stated in the precocious essay<sup>10</sup> of the youthful Alexander Hamilton. His central doctrine was that the colonists owed their allegiance to the King and not to Parliament, and that Parliament had no right whatever to pass laws for them. To exercise legislative power was one of the natural rights which were inalienable. A people was free only when it shared in making the laws that governed it. The colonists had always been free, and Parliament had no authority to destroy their freedom. To deny the authority of Parliament was not inconsistent with loyalty to the King, who was the sovereign bond uniting all parts of the Empire. The land of the colonists was held through charters given by the King; in granting these Parliament had no part. Parliament derived its powers from the people of England only. They had no rights to the life, liberty, or property of the colonists and could delegate none nor take away any. To preserve their rights, subjects might revert to force, and the right of revolution was a natural right. Franklin insisted that the only bond of union was the King. “The British legislature are undoubtedly the only proper judges of what concerns the welfare of that state; the Irish legislature are the proper judges of what concerns the Irish state;

<sup>9</sup> *Works*, IV, 146. For other statements of this point of view, see Niles, *Principles and Acts of the Revolution in America*, 287-294; S. Hopkins, *The Rights of the Colonies Examined* (1764); James Otis, *Rights of the British Colonies* (1764), *Vindication of the British Colonies* (1765); Richard Bland, *An Inquiry into the Rights of the British Colonies* (1766); T. Jefferson, *Summary View of the Rights of the Colonies* (1774); James Wilson, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* (1774); John Dickinson, *Essay on the Constitutional Power of Great Britain over the Colonies in America* (1774).

<sup>10</sup> *The Farmer Refuted* (1775). See Hamilton's *Works* (Lodge ed.), I, 51.

and the American legislatures of what concerns the American states respectively.”

This point of view was also held by a number of Englishmen, especially by Pitt.<sup>11</sup> Liberal statesmen in England recognized the necessity of making the political apparatus of the Empire correspond more closely to actual conditions. Ten years before the outbreak of the Revolution, a colonial governor wrote: “The patchwork government of America will last no longer.” Governor Pow-nall of Massachusetts Bay frankly advocated a scheme of imperial federation<sup>12</sup> in which the colonies should send delegates to an imperial parliament, and similar ideas were put forward in the early period of the controversy by James Otis<sup>13</sup> and by Benjamin Franklin.<sup>14</sup> The colonists in general demanded colonial home rule and viewed the Empire as a commonwealth of nations, rejecting both the theory of colonial dependency and the idea of imperial federation.

In general, British opinion supported Grenville’s view that “colonies are only settlements made in distant parts of the world for the improvement of trade, and that they would be intolerable except on the conditions contained in the Acts of Navigation.” The supremacy of the British Parliament was urged on the ground that, as the Empire expanded, Parliament had become an imperial body with, as Burke put it, “a reserved power in the Empire to supply any deficiency that may weaken, divide, and dissipate the whole.” It was argued that the colonies were “virtually represented” in Parliament, since each member of that body represented the interests of the Empire as a whole, and since there were many cities in England that sent no direct representatives. It was also held that the colonies should bear their proportionate share of maintaining the expensive fleets and armies that defended the Empire, and that the right to levy internal taxes in the colonies was not essentially different from the right to levy American customs duties, which the colonists had not opposed.

Especial emphasis was given in colonial theory to the principle that no taxes should be levied except by representatives of those

<sup>11</sup> Pitt stated that “the Commons of America, represented in their several assemblies, have ever had in their possession this constitutional right of granting their own money.”

<sup>12</sup> *Administration of the Colonies, wherein their Rights and Constitutions are Discussed and Stated* (1768).

<sup>13</sup> *Vindication of the British Colonies* (1765).

<sup>14</sup> *Works*, II, 384-385; III, 402-403; IV, 2.

taxed. Taxation without representation was tyranny.<sup>15</sup> Since the colonists were not represented in Parliament, that body had no legal right to levy taxes in the colonies. It was held that American representation in Parliament was impracticable, hence the only bodies that could tax the colonists were their colonial assemblies. No great demand was made by the colonists for representatives to the Parliament at Westminster.<sup>16</sup> The argument against parliamentary taxation was clearly stated by the Stamp Act Congress in 1765, in declaring that "it is unseparably essential to the freedom of a people and the undoubted right of Englishmen, that no taxes be imposed upon them without their consent, given personally or through their representatives." In 1774, the First Continental Congress stated the rights of the colonists to life, liberty, and property, and insisted that "they have never ceded to any sovereign power whatever a right to dispose of either without their consent."

Among the Americans who, during the decade before the Revolution, consistently attacked the question of the relation of the colonies to the mother country as a constitutional one, John Adams was conspicuous. He was proud of his English intellectual inheritance, was familiar with the writings of Sidney, Harrington, and Locke, and was deeply interested in the study of government. He made a careful analysis<sup>17</sup> of the legal aspects of the powers of Parliament and of the rights of the colonial legislatures, and insisted upon the absolute freedom of the colonies from parliamentary control over internal concerns and taxation. He agreed that the King "in his political capacity did rule the diverse nations and kingdoms of his empire," but argued that he must "govern them by their distinct laws," thus preserving the separate identity of the component nations in the empire-commonwealth. The empire was an association of equals, each with distinct legislative powers.

The constitutional arguments of the colonists were weak in two

<sup>15</sup> Samuel Adams, *Natural Rights of the Colonists*, in *Works*, II; D. Dulany, *Considerations on the Propriety of Imposing Taxes on the British Colonies for the Purpose of Raising a Revenue by Act of Parliament* (1766).

<sup>16</sup> James Otis and Benjamin Franklin differed from most of the Patriots in holding that colonial representation in Parliament was desirable and practicable. Adam Smith in England advocated representation in Parliament apportioned according to national revenue, and prophesied that if this right were granted to the colonies, the seat of British Government would be one day transferred, and properly so, to America, the central and most flourishing part of the Empire.

<sup>17</sup> See the "Novanglus" papers, written by John Adams and published in the *Boston Gazette*, 1774-1775; also his *Thoughts on Government* (1776).

respects.<sup>18</sup> In the first place, they did not recognize the change that had taken place in the British system of government, in which the power of Parliament had gained steadily at the expense of the King. Parliament was rapidly becoming the sovereign body, and the colonial theory of royal supremacy in the Empire was an antiquated doctrine based upon earlier conditions and soon to be obsolete. British Tory leaders believed that the omnipotence of Parliament was the sole principle upon which the unity of the vast Empire could be securely established.<sup>19</sup> In the second place, the colonial theory of representation did not correspond to the English theory or to the actual facts in the composition of the British Parliament. In America representation was based roughly upon population, divided into territorial districts, with each representative residing in his district. In England, representation was by classes, a member was not necessarily a resident of his district, and large sections of the population, especially in the newer cities, were unrepresented in Parliament. Accordingly, the English could argue that the colonists were represented in Parliament as truly as were large parts of the British population. The colonial theory of representation was in advance of the situation in England previous to the Reform Acts. The ablest jurists<sup>20</sup> of the time did not agree with the constitutional arguments of the colonists, and in the later period of the Revolution the legal arguments were generally abandoned by the colonists in

<sup>18</sup> In a recent book, Prof. McIlwain has argued ably for the validity of the constitutional arguments of the colonists previous to the actual Revolution. He points out that there were two opposing views as to the nature of the British constitutional system, and that the colonial arguments were upheld by a long list of precedents and decisions, especially in connection with the position of Ireland in the Empire. See his *The American Revolution* (1923).

<sup>19</sup> There were a few English writers who agreed with the constitutional arguments of the colonists. See J. Cartwright, *American Independence the Glory and Interest of Great Britain* (1774); G. Sharp, *Declaration of the People's Natural Right to a Share in the Legislature* (1774); R. Price, *Observations on the Nature of Civil Liberty*, Pt. I, Sec. iii (1776).

<sup>20</sup> See Lord Mansfield's dictum (1776) that "in every government the legislative power must be lodged somewhere, and the executive must likewise be lodged somewhere. In Great Britain the legislative is in Parliament, the executive is in the Crown." He argued the Austinian theory of Sovereignty, and upheld the supremacy of Parliament and the dependency of the dominions. He asserted the supremacy of Parliament over the colonies, saying that "the British Legislature, as to the power of making laws, represents the whole British Empire, and has authority to bind every part, and every subject without the least distinction, whether such subjects have the right to vote, or whether the law binds such places within the realm or without."—Hansard, *Parliamentary History*, XVI, 174. Dr. Samuel Johnson stated bluntly that "in sovereignty there are no gradations. The colonies must either be subject to English sovereignty or completely independent." See his *Taxation no Tyranny* (1774).

favor of the more general and philosophical theories of natural rights.

In these doctrines the colonists were sustained by dogmas familiar in England in the seventeenth century. They drew largely on the writings of Hooker, Milton, Harrington, Sidney, and Locke, and reproduced many of the arguments of the Levelers of the previous century. They were also familiar with the writings of Grotius, Pufendorf, and Vattel on international law. They believed in an original, pre-political state of nature, in which men were free and equal; in a social compact by which the free and equal individuals established a body politic and set up a government for their general welfare; in a body of natural rights possessed by every individual, which must be safeguarded in all circumstances against governmental encroachment; in the indefeasible sovereignty of the people, including their right if necessary to overthrow a tyrannical government by revolution; in the restriction of all governmental organs by a system of checks and balances, and by the careful prescriptions of a written constitution. These doctrines, long familiar, were particularly applicable to the issues of the times.

Revolutionary political thought was based on the doctrine of a law of nature. In the seventeenth and eighteenth centuries, natural law was one of the great branches of learning in Europe, and the works of Grotius, Pufendorf, Vattel, and Burlamaqui were widely read in America. The idea of natural rights, as developed in England during the struggles of the seventeenth century, was expressed in classic form in the writings of Locke and Blackstone. The deistic emphasis upon nature as an all-important concept in philosophy and theology was characteristic of the times. The colonists read Pope, Bolingbroke, and Hume, and simplified versions of the metaphysical works of Newton and Locke. They listened to sermons upon the supremacy of the laws of God, and perused the arguments of the deists. In this philosophy they found controversial weapons suited to their needs. James Otis inculcated in his pupils the maxim that a lawyer ought never to be without a volume of natural or public law, or moral philosophy, on his table or in his pocket.<sup>21</sup> He held that the law of nature was made by God. Man has no power to mend it or alter its course. He can only obey or disobey it. He declared that government "has an everlasting foundation in the unchangeable will of God, the author of Nature, whose laws never vary," and that "there can be no prescription old enough to super-

<sup>21</sup> Tudor, *Life of Otis*, 10.



sede the law of nature and the grant of God Almighty, who has given to all men a right to be free.''<sup>22</sup>

Samuel Adams, in a report presented to the Boston town meeting in 1772,<sup>23</sup> declared that the right to life, liberty, and property was a natural right, a branch of the first law of nature, the right of self-preservation. Again he said: "The rights of Nature are happily interwoven in the British Constitution. It is its glory that it is copied from Nature."'<sup>24</sup> The law of natural reason was the standard to which all positive law should conform. Alexander Hamilton, while still a student in college, argued<sup>25</sup> that the Deity is the author of an eternal and immutable law which takes precedence over all human regulations and binds mankind prior to any human institution. The natural rights of men depend upon this law. The source of natural rights was found in religion, in human nature, and in the common law of England. They were either customary rights of long standing, or metaphysical deductions from religious thought or from the psychology of human nature. The doctrine of natural law was worked out most fully in America in the writings of James Wilson.<sup>26</sup> He believed that law should be taught as a historical science, and differed decidedly from the rigid ideas of sovereignty and law held by Blackstone and Austin. He denied that law implies a command of a superior to an inferior, since that would be inconsistent with the omnipotence of the Deity in the sphere of legislation, and with the natural equality of all men. To Wilson natural law was progressive, since as men advance in knowledge and virtue they become capable of following higher standards. He emphasized the sovereignty of the people rather than the sovereignty of the state, and viewed the consent of those who obeyed rather than the command of a superior as the sanction of law. In this way he found a legal justification for the American Revolution. He believed that international law should be elevated to a respectable place in the science of jurisprudence, and even argued for an international judicial tribunal to decide disputes among nations.

The exact nature of the social contract was little discussed in

<sup>22</sup> *Rights of the British Colonies Asserted and Proved* (1764), 11, 16.

<sup>23</sup> This report attracted wide attention in England and in America, and probably served as a model for the Declaration of Rights of the first Congress in 1774, for the Declaration of Independence, and for the Virginia Bill of Rights.

<sup>24</sup> *Writings*, I, 47.

<sup>25</sup> *The Farmer Refuted* (1775).

<sup>26</sup> See his *Works* (1804). See also N. Chipman, *Sketches of the Principles of Government* (1793).

colonial political theory. Thomas Paine<sup>27</sup> gave a fanciful sketch of early patriarchs assembling to form a government, but in general the details of the process were ignored. As one writer stated, "what eye could penetrate through Gothic night and barbaric fable to that remote period?"<sup>28</sup> Sometimes the process was viewed as the means by which society was formed, as in the Virginia Declaration of Rights, which stated that "men . . . by nature equally free and independent enter into a state of society" by compact. More often it was viewed as the process by which government was set up. The best statement of this point of view appeared in the preamble to the constitution of Massachusetts, which read: "The body politic is formed by a voluntary association of individuals: it is a social compact by which the whole people covenants with each citizen and each citizen with the whole people that all shall be governed by certain laws for the common good." The doctrine of social contract made a strong appeal to Americans because of the prominence it enjoyed when the early New England settlements were made, and because it had been put into actual application in the Mayflower Compact and other documents. The methods by which the early constitutions were adopted were also viewed as social contracts through which the people formally consented to the government thereby established. Paine added a new significance to the contract theory by deriving the sovereign state, not from a fictitious contract entered into in the remote past, but from a continuous contract reaffirmed by each generation.<sup>29</sup> This principle justified the people at any time in revoking their fundamental law, and denied that there was any law superior to the public will expressed through the majority.

It was generally held that the natural rights of individuals survived after the compact was formed and were guaranteed by it. In all the discussions of the period, Jefferson's famous phrase in the Declaration of Independence, that men are "endowed by their Creator with certain unalienable rights" to secure which governments were instituted, appeared repeatedly. The constitution of New Hampshire (1784) stated that "when men enter into a state of society, they surrender up some of their natural right to that society, in order to secure the protection of others." Most of the states prefaced their early constitutions with "Declarations of Rights" in which the inherent natural rights of men were enumer-

<sup>27</sup> In *Common Sense* (1776).

<sup>28</sup> See "Boston Orations," in Niles, *Principles and Acts of the Revolution in America* (1822), 51-52.

<sup>29</sup> *Rights of Man* (1791), Pt. I, 278.



ated. The Declaration of Independence summarized these rights as "life, liberty, and the pursuit of happiness." In the state declarations, more specific references were found to the natural right of property. Virginia and Massachusetts referred to the inherent right of "the means of acquiring and possessing property." The English Revolution of 1688, largely the work of a landed aristocracy, had placed great emphasis on the right of property; and John Locke insisted especially on the right of individuals by the law of nature to what they have acquired.<sup>30</sup> This part of Locke's theory met general acceptance, and seemed particularly applicable in America when the issue of taxation was raised.

The colonists laid great stress upon the two rights for which the Independents had especially contended, freedom of worship and freedom of expression. They also incorporated into their natural rights the familiar guarantees against arbitrary judicial process, and insisted upon arrest by warrant, detention only for shown cause, and trial by jury. The democratic spirit of America laid stress upon the equality of citizens. The Virginia Declaration of Rights attacked privilege by stating "that no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge be hereditary." With the abolition of privilege was often accompanied the right to vote and hold office by every man having a permanent common interest in the community. The right to assemble peaceably and consult upon the common good was also mentioned. The right of revolution was clearly stated. The Declaration of Independence affirmed that, when a form of government becomes destructive of the ends for which it was established, "it is the right of the people to alter or abolish it and to institute new government." The Virginia Declaration of Rights assigned to "a majority of the community" the "indubitable, unalienable and indefeasible right to reform, alter, or abolish" an offending government.

The success of the Revolutionary movement depended upon a general belief in the right of revolution, and the Patriot leaders defended this right by appeals to history and to the doctrines of the social contract theory, especially those of Locke. The colonists believed that the defense of their freedom was a duty as well as a right, and that armed defense of their natural rights was justifiable.

<sup>30</sup> Sir F. Pollock, "Locke's Theory of the State," in *Essays in the Law*, 80-199.

If their early arguments in favor of their constitutional rights as Englishmen could not be maintained, they could at least defend their natural rights as men.

The writings of the period and the governmental institutions then created show clearly that the colonists held certain general theories as to the nature and end of the state. Their reasoning was decidedly individualistic. The sovereign and independent individual, possessing natural rights, was the starting point in their doctrine. The state was created to protect these rights and its activities should be kept within strictly limited bounds. What the government should not do was more important than what it should do. The colonists feared the danger of oppression under a strong and centralized government. They opposed especially a strong executive and a large standing army. They believed that the civil power should control the military. Their experience with the English crown and the royal governors led to a reaction against executive authority and to the practical supremacy of the legislature, which was regarded as the immediate representative of the sovereign people. They believed that the best government is one which governs least, and that government must always be kept under strict limitations lest it exceed its bounds and become dangerous. Government should be granted small powers, and such powers as were given must be separated and balanced one against another by the separation of executive, legislative, and judicial departments. The colonists, familiar with the division of powers among King, Lords, and Commons, readily accepted Montesquieu's theory that the separation of powers was the best guarantee of liberty.

It was also generally held that legislative and executive officials should be chosen by election and for short terms, so that abuse of power might be quickly corrected by the people. Annual elections were common. As John Adams said: "Where annual elections end, there tyranny begins." Rotation in office was sometimes provided so that men should pass frequently from civil to political life. Revolutionary political theory laid great emphasis on the sovereignty of the people and the responsibility of government to popular control. The Declaration of Rights of the Constitution of Virginia (1776) declared: "That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them." Locke's doctrine of the responsibility of the ruler to the ruled, and the theory of the Levelers that Parliament was not unlimited became part of

colonial thinking. Local government was held in high esteem. In the communities authority could be subjected to the constant scrutiny of the people. The farther it was removed, the greater the danger of tyranny. Both the conditions of colonial life and the experience of the colonies with the remote home government caused them to value local self-government. In their theory of a written constitution, created by a special process, distinct from the usual organs of government, the colonists made a distinct contribution to political theory. The written constitution was intended to be a deliberate expression of popular will, both in content and in origin. The idea that it should be periodically revised was held by many.

In their attitude toward monarchy and the principle of heredity in government, the theory of the colonies underwent a marked change during the Revolutionary period. In the earlier part of the controversy the British system of government was held in high esteem and was frequently referred to in the colonies as the best in the world. James Otis praised the British constitution, and called its King the best and his subjects the happiest. In their constitutional arguments, the colonists looked to the King <sup>31</sup> rather than to Parliament as the tie that bound them to the Empire. After the outbreak of war, the rapid rise of democratic sentiment gave an impetus to republican doctrines, and the British system was no longer held in such high esteem. The attack on monarchy was led by Thomas Paine, whose writings <sup>32</sup> exerted a tremendous influence on American thought and feeling. John Adams, who had no love for Paine, wrote in a letter to Jefferson: "History is to ascribe to Paine the Revolution." Lafayette said repeatedly, "To me America without Thomas Paine is unthinkable." Paine attacked bitterly the principle of hereditary rule and the doctrine of divine right of kings. He held that a king who actually governed was dangerous and that a king in a constitutional government was unnecessary. The principle of choosing a ruler because of his descent was held up to ridicule. Paine had no praise for the British constitution, for the principle of monarchy, or for the much esteemed British separation of powers. He attacked savagely such writers as Blackstone and Burke, who had a mystical reverence for tradition. His ideal was

<sup>31</sup> One of the first American statesmen to turn attention from Parliament and attack the tyrannical acts of the Crown was James Wilson. See his *In Vindication of the Colonies* (1775). He followed Coke in arguing that the King's acts were invalid if unlawful.

<sup>32</sup> Especially *Common Sense* (1776); *The Forester's Letters* (1776); *The American Crisis* (1776-1783).

“representation engrafted upon democracy,” and he approved especially a written constitution with provision for revision and amendment. In his writings he abandoned the tone of humility and loyalty in which the Americans had previously framed their petitions, and boldly attacked the King, the British system of government, and the policies of the mother country.

Two distinct currents of thought may be seen in colonial politics. One received its impulse from Puritan theocracy, which had no real love for democratic ideas, but which, when confronted by royal authority, asserted popular rights and encouraged anti-monarchic sentiment. The other, following the tradition of English law, was deeply attached to the royal prerogative as a necessary check to representative institutions. Even Paine, in attacking monarchy, suggested that the charter be worshiped. “Let it be brought forth, placed on the divine law, the work of God; let a crown be placed thereon, by which the world may know that so far as we approve of monarchy, in America the law is King.” After the adoption of the Constitution, the veneration formerly felt for monarchy became attached to that document.

Independence was not declared until a year after the colonists had announced the justice of their cause in taking up arms against the King. The leading Americans had frequently protested their loyalty even when most bitterly opposing parliamentary legislation. James Otis, in 1765, spoke of “independence, which none but rebels, fools, or madmen will contend for.” Benjamin Franklin, in 1774, stated: “I have never heard in any conversation from any person drunk or sober the least expression of a wish for separation from England.” In the same year Washington declared: “I am well satisfied that no such thing [as independence] is desired by any thinking man in all North America.” And in 1782, Jefferson stated that “it is well known that in July, 1775, a separation from Great Britain and the establishment of a republican government had not yet entered into any person’s mind.” The question of independence might never have arisen but for Britain’s insistence that no line could be drawn between absolute subjection and absolute independence. The federal idea in government had not yet been worked out.

Many causes led the Americans to hesitate in breaking away from the mother country. Sentimental attachments bound them to the Empire, which to them was the guaranty of immemorial rights. Lack of unity among the colonies made such a step hazardous.

Many feared that if the colonies became independent and governed themselves there would be serious danger of anarchy or of despotism. The commercial classes on both sides of the Atlantic were opposed to a break in their profitable business connections. Conditions in English politics, where many leaders sympathized with the colonists, and the possibility that the Tory government of Lord North might be replaced by a government controlled by the friends of America, were a strong argument for delay. Besides, a large part of the population of the colonies opposed separation, even after independence was declared. John Adams held the opinion that about one-third of the people were opposed to the measures of the Revolution in all its stages. There is much truth in the statement of the historian Lecky, that "the American Revolution, like most others, was the work of an energetic minority who succeeded in committing an undecided and fluctuating majority to courses for which they had little love, and leading them step by step to a position from which it was impossible to recede."

So strong was the feeling of the more conservative classes that some method of accommodation with Great Britain should be found, that for more than a year after the outbreak of hostilities the popular party was restrained from broaching the subject of independence. The delicacy with which the ardent advocates of independence had to treat this issue and the slowness with which the colonies were induced to accept the idea showed the strength of the opposition. The necessity was felt for enlightening the people on the question, and Dr. Benjamin Rush suggested to Thomas Paine that he issue a pamphlet on the subject. Under the title of *Common Sense* (January 9, 1776), Paine made a clear and forcible statement of the arguments for independence, based on history, the present situation of the colonies, and the need for stable government. He argued that independence must come sooner or later, and that the present was the better time as the colonists had military leaders trained in the recent war. Paine's pamphlet had a large sale and a great influence in preparing the minds of the people for the Declaration of Independence. Washington said that it "worked a powerful change in the minds of many men." Jonathan Odell, the Tory satirist, wrote: "The work like wildfire through the country ran."<sup>83</sup> The estimate of Paine's contemporaries, that *Common Sense* was worth an army of ten thousand men to the Continental

<sup>83</sup> See *The Loyal Verses of Joseph Stansbury and Doctor Jonathan Odell*, ed. by W. Sargent (1860).



cause, hardly exaggerates its importance. In later years Paine arrogantly claimed that he had done more even than Washington in establishing the American republic. Samuel Adams<sup>34</sup> and William Drayton<sup>35</sup> were also early and persistent advocates of independence.

The adoption of the Declaration of Independence exerted a tremendous influence on political thought. It brought the speculations of political philosophers down from the heights of theory into the arena of practical politics. It proclaimed its principles of liberty to all the world as the basis of all government and stirred men anew to investigate the foundations of political life. Its ideas found many sympathizers in Europe, who watched with intense interest the outcome of the Revolution. In America, it cleared the air and marked a sharp separation between Patriots and Tories. It brought to an end the difficult task of owing allegiance to the British crown and carrying on a war against it at the same time. It met the charges of inconsistency and vacillation which Thomas Paine so mercilessly pressed home in his *Common Sense*. It was also a shrewd step in diplomacy, making possible aid from those European countries which wished to weaken England, and which would help the colonies to separate themselves from the mother country, but which were not interested in securing a redress of grievances for colonies that remained loyal.<sup>36</sup>

While the doctrines previously outlined became dominant in the colonies, they were not unanimously held. Many Loyalists opposed the American Revolution on grounds of political principles, as well as for reasons of personal interest and of expediency. Theories supporting monarchy and strong government, such as had been put forward in England by James I and Sir Robert Filmer,<sup>37</sup> and attacking the doctrine of natural rights, social contract, and democracy, appeared also in the colonies. In 1774-1775, Samuel Seabury wrote a series of powerful essays<sup>38</sup> intended to shatter the

<sup>34</sup> Perhaps the first threat of independence was Samuel Adams's appeal to the "Sons of Liberty," published in the *Providence Gazette*, Mar. 18, 1769. See also speech on "American Independence," delivered in Philadelphia, Aug. 1, 1776, in A. Johnston, *American Orations* (1927), I, 24-38.

<sup>35</sup> In an address to the grand jury of Charleston, Apr. 23, 1776, he enumerated the acts of King and Parliament that justified the separation of the colonies from the Empire.

<sup>36</sup> This argument was also used by Richard Henry Lee in his speech supporting the resolution for independence. See *Great Debates in American History*, I, 197.

<sup>37</sup> See his *Patriarcha* (1680).

<sup>38</sup> *The Westchester Farmer*. They were answered by Hamilton in *The Farmer Refuted*.



arguments of the young Patriots who were urging armed resistance to England, and to uphold the Loyalist cause. Daniel Leonard, a member of the Boston bar who was aligned with the Tory party, wrote a series of weekly letters for the *Massachusetts Gazette*, appealing to colonial loyalty, and depicting the horrors of sedition. His political philosophy was based on the *Leviathan* of Hobbes, and he exalted the sovereign state and the British system of law. He held that the authority of King and Parliament was absolute. "Let the parliament lay what burdens they please on us, we must, it is our duty, to submit and patiently bear them, till they will be pleased to relieve us."<sup>39</sup> A Virginia clergyman, Jonathan Boucher,<sup>40</sup> made a clear statement of the Tory theory. He attacked the democratic tendencies of the times and held them responsible for general decline in morals. He opposed the belief in the natural equality of men and the doctrine that government rests upon popular consent. He held that authority was derived from God and that kingship was divine in origin. He supported absolute authority, believed that government was a blessing and not an evil, and denied the right of resistance against established authority. Lucifer, he held, was the father of rebellion. He believed that democracy would lead to anarchy, and that the people were not competent to criticize those set in authority over them. In his later writings<sup>41</sup> he argued that the United States was founded on false democratic principles, that it was responsible for the horrors of the French Revolution, and that it would ultimately become a monarchy. Such reactionary theories met little acceptance in America.

American Loyalist opinion was more accurately expressed by Thomas Hutchinson, then an exile in England.<sup>42</sup> In a systematic way he commented on the Declaration of Independence, paragraph by paragraph. Of its general political philosophy he said little, aside from pointing out the discrepancy between the theory which proclaimed all men equal and the practice that deprived "more than a hundred thousand Africans of their rights to liberty." The greater part of his pamphlet was devoted to refuting the charges against the King which he considered "false and frivolous," absurd in logic, and without foundation in fact. Tory propagandists, in general, took

<sup>39</sup> See his *Massachusettensis* (1776). It was in reply to his arguments that John Adams wrote his *Novanglus*.

<sup>40</sup> In his *A View of the Cause and Consequences of the American Revolution* (1797).

<sup>41</sup> Preface to a volume of sermons published in 1797.

<sup>42</sup> *Strictures upon the Declaration of the Congress at Philadelphia: In a Letter to a Noble Lord* (London, 1776).

the view that the Revolution was the work of a handful of unscrupulous conspirators, composed of "pettifogging attorneys, bankrupt shopkeepers, and outlawed smugglers." It was controlled by "self-constituted committees and conventions that had usurped authority," and it aimed at a leveling movement and a "low opinion of government" which threatened law and order and which opposed history, experience, and the divine sanction.

In general, the colonial theories of the Revolutionary period were based upon the principles and precedents of English political development. They adopted the same line of reasoning that had been followed by the revolutionary leaders in seventeenth century England in opposition to the Stuarts. They referred frequently to the writers of that period and adopted the substance of their arguments for natural rights, social contract, popular sovereignty, and the right of revolution. Many of the phrases of John Locke<sup>43</sup> were incorporated verbatim in American documents and became accepted as axioms in political thought. The colonial leaders were familiar with history and with the writings of earlier political theorists. As John Adams said of the American doctrines: "These are what are called revolutionary principles. They are the principles of Aristotle and Plato; of Livy and Cicero, and Sidney, Harrington and Locke; the principles of nature and eternal reason; the principles on which the whole government over us now stands."<sup>44</sup> Aside from Montesquieu, whose doctrines were based upon his observation of the English system, the radical philosophers of France exerted little influence upon American Revolutionary thought. While the destructive theory of the American Revolution followed doctrines long familiar, the constructive theory of the colonists in setting up their governments struck off along new lines. This is especially notable in their rejection of monarchy and of the hereditary principle, in their belief in written constitutions, and in the many democratic features that were incorporated into these constitutions.

The elevation of the American colonies to the position of sovereign states, after independence was secured, gave a great stimulus to national pride. Joel Barlow's *Vision of Columbus* (1787), Timothy Dwight's *The Conquest of Canaan* (1785), and President Stiles's famous election sermon on "The United States elevated to Glory and Honor"<sup>45</sup> were illustrations of the new attitude taken

<sup>43</sup> Compare the Declaration of Independence with Locke's *Two Treatises of Government*, Secs. 220, 222, 225, 230.

<sup>44</sup> *Works*, IV, 15.

<sup>45</sup> Preached before the General Assembly of Connecticut in 1783.

by Americans to their country. The spirit of state pride was manifest in the numerous histories of the states<sup>46</sup> that appeared in the years immediately following the Revolution. The political convictions and animosities of the Revolutionary period were reflected in numerous songs, ballads, and verse satires.<sup>47</sup> Almost every town had its ballad maker, every newspaper its poets' corner, and every important event was celebrated in song. One prophetic divine boasted of the opportunity presented "for converting this immense northern continent into a seat of knowledge and freedom, of agricultural and commerce, of useful arts and manufactures, of Christian piety and virtue, and thus making it an inviting and comfortable abode for many millions of the human species."

### 3. ESTABLISHMENT OF STATE GOVERNMENTS

The winning of independence involved a double task, military and governmental. By force of arms the authority of England must be brought to an end. To maintain and direct the army a government capable of supplying money and of carrying on negotiations with other countries was necessary. It was also important to maintain peace and order at home after the breakdown of the English colonial organization. The Continental Congress, which represented the union of the colonies, directed military operations and foreign policy. While accepted by the colonies, it was a revolutionary body acting without legal authority. The separate colonies undertook the task of maintaining internal order, grudgingly furnished men and money at the request of the Continental Congress, and proceeded to set up legal systems of government.

The work of spreading revolutionary doctrines and molding a public opinion in support of the war was first accomplished by unofficial methods. Voluntary groups and associations were formed in which the agitators discussed opposition to the mother country. A second system of government was set up by the side of the established order. Efforts were then made to secure official sanction for these bodies from town meetings or colonial assemblies. In the Boston town meeting of 1772, Samuel Adams moved to appoint a committee to "state the rights of the colonies—to communicate and

<sup>46</sup> For example, Belknap's *New Hampshire* (1812); Ramsay's *South Carolina* (1809); Williamson's *North Carolina* (1812); Proud's *Pennsylvania* (1797); and Trumbull's *Connecticut* (1818).

<sup>47</sup> See F. Moore, *Songs and Ballads of the American Revolution* (1856); W. Sargent, *The Loyalist Poetry of the Revolution* (1857).

publish the same to the several towns—to request from each town a free communication of their sentiments on this subject.” In almost every town a committee, self-constituted or selected by the town meeting, appeared. The Virginia House of Burgesses in 1773 established a committee to “keep up and maintain a correspondence and communication with our sister colonies.” This plan was adopted by other colonies, and before the authority of England was seriously questioned a framework of revolutionary government had been established. From these committees Loyalists were excluded, and by means of influence and intimidation revolutionary opinions were enforced. As the authority of the English government weakened, these committees and the conventions they summoned became the only organized governments in the colonies.

In 1781 the Continental Congress, on request of several of the colonies, recommended that “where no government sufficient to the exigencies of their affairs has been hitherto established, they adopt such government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general.” All the colonies, except Connecticut and Rhode Island which were satisfied with their charters, followed this advice; and either through their assemblies or in special conventions drew up written frameworks of government. These documents represented colonial experience and Revolutionary theories. Seven of them were preceded by bills of rights; and many contained clauses repeating the theories of John Locke, and stating the doctrines of natural rights and of popular sovereignty. The creation of the constitutions was viewed as a method by which the people, in the exercise of their sovereignty, delegated powers to a government and at the same time placed limitations upon its powers.

In general the state constitutions reproduced the system of government with which the colonists were familiar, with certain modifications. The power of the governor was much reduced. He was selected for a short term either by popular vote or by the legislature. His power of appointment was much restricted and in most states his veto power was destroyed. The powers of the legislature were increased. It had the authority to frame laws, levy taxes, and make appropriations, and in many states the right of initiating money bills was limited to the lower house. Pennsylvania and Vermont created a Council of Censors to inquire whether the constitution was being observed and to call conventions to revise the con-

stitution. The majority of the states made some provision for constitutional amendment differing from the usual process of law-making. No important change was made in qualifications for voting.

While none of the constitutions contained a definite statement that the courts might annul laws passed by the legislatures, the colonists were familiar with the principle of appeal to the King in Council and to the annulment of colonial statutes; and the state judges early claimed the power to set aside state laws that conflicted with the constitution. In Virginia in 1778 and in New Jersey in 1779 the courts upheld the constitution in opposition to the legislature. In 1782 Chancellor Wythe stated: "If the whole legislature . . . should attempt to overlap the bounds prescribed to them by the people, I, administering the public justice of the country, will say to them here is the limit of your authority, and hither you shall go, but no further."<sup>48</sup> In the case of *Trevett v. Weeden* in 1786, the court of Rhode Island definitely refused to enforce a state statute on the ground that it was "unconstitutional and void." This power of the courts kept alive the principle that ultimate sovereignty resided in the people, and that the constitution limited the powers of the legislature.

The original state constitutions indicated in many ways the prevalent political theory of the time. They were the method by which the people of the states changed their natural rights for civil rights upon the secure basis of a social compact. They represented a clear distinction between constitutional law and statutory law, between a constitutional convention and the ordinary legislative body. Some of the original constitutions were referred to a direct vote of the people, and this practice later became universal in the states. Their natural rights and their ancient privileges as free-born Englishmen were placed in the constitution, beyond the power of the ordinary government to impair. Rights of life, liberty, and property, freedom of speech, press, and conscience, and trial by jury were protected; and *ex post facto* laws, bills of attainder, excessive bail and fines, and cruel and unusual punishments were prohibited.

The original state constitutions stated clearly the doctrines of popular sovereignty and of social contract. The Massachusetts declaration of rights states that, "all power residing originally in the people, and being derived from them, the several magistrates and

<sup>48</sup> Thayer, *Cases in Constitutional Law*, I, 55.



officers . . . are their substitutes and agents, and are at all times accountable to them." The preamble to the same document declared that the body politic was formed by a social compact which established government for purposes of general welfare. There was nothing in the early constitutions to indicate that the right to vote was one of the natural rights of man. It was viewed rather as a privilege to be conferred upon those who showed fitness. The Virginia declaration of rights stated that "all men having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage." The Pennsylvania declaration of rights implies that the right to vote extends only to those who have something at stake in the maintenance of law and order. Colonial suffrage qualifications were only slightly relaxed, and the actual control of government was in the hands of the propertied classes.

The principle of separation of powers was generally accepted. The Massachusetts declaration of rights stated: "In the government of this commonwealth the legislative department shall never exercise the executive and judicial powers or either of them; the executive shall never exercise the legislative and judicial powers or either of them; the judicial shall never exercise the legislative and executive powers or either of them; to the end it may be a government of laws and not of men." The New Hampshire constitution of 1783 declared that "the legislative, executive, and judicial [powers] ought to be kept as separate from, and independent of, each other as the nature of a free government will admit." Maryland stated the doctrine in unqualified terms, declaring that "the legislative, executive, and judicial powers of government ought to be forever separate, and distinct from each other." In all, six of the states that adopted constitutions during the Revolutionary period explicitly affirmed the theory of separation of powers. John Locke, one of the first writers to speak of three powers, had classified them as executive, legislative, and federative. By the latter he meant the power of a state in dealing with other states. This was not the classification adopted in America. They followed rather the doctrine which was brought to the attention of eighteenth-century political philosophers by Montesquieu,<sup>49</sup> who believed that liberty

<sup>49</sup> In *The Spirit of the Laws* (1748). The doctrine of separation of powers was expounded before Montesquieu by P. de Rapin-Thoiras, in his *The History of England* (1732-1733). This book was quoted by a number of the American Revolutionary writers. See R. Bland, *Enquiry into the Rights of the British Colonies* (1769).



was best safeguarded when the powers of government were not concentrated in a single department, and who made the orthodox division into legislative, executive, and judicial. The threefold classification was attacked, however, by Thomas Paine,<sup>50</sup> who stated that while "it has been customary to consider government under three distinct heads, the legislative, the executive, and the judicial, we can perceive no more than two divisions of power—that of legislating or enacting laws, and that of executing or administering them. That which is called the judicial power is strictly and properly the executive power." This twofold division has been emphasized by recent American writers.<sup>51</sup>

The Americans did not attempt to make the separation of powers complete. They modified it by the check and balance system by which each department had some control over the others. As Madison stated, the principle of separation of powers "does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other."<sup>52</sup> An effort was made, therefore, to so connect and blend the departments as to give each a constitutional check over the powers of the others. In some of the states, especially in the South, the separation of powers was less distinct, and authority was chiefly concentrated in the legislature. It was of these states that Jefferson spoke<sup>53</sup> when he said that they were "elective despotisms" and "not the government we fought for."

The people of the original states also believed in a "republican form of government." This term was variously defined. Some writers, such as Jefferson and Madison, seemed to be inclined to the opinion that representative institutions were the essential features of a republican system of government. In general, however, it was defined more broadly. Paine wrote that "republican government is no other than government established and conducted for the interest of the public."<sup>54</sup> The convention which framed the Massachusetts constitution of 1780 voted to establish the new government as a "free republic," and defined the term as follows: "It is the essence of a free republic that the people be governed by fixed laws of their own making." Throughout the period great emphasis was placed on the reign of law, to which public officials

<sup>50</sup> *The Rights of Man*, Pt. II, 33.

<sup>51</sup> F. J. Goodnow, *Politics and Administration* (1900).

<sup>52</sup> *The Federalist*, Nos. 47, 48.

<sup>53</sup> In his *Notes on Virginia*, Ch. XIII.

<sup>54</sup> *The Rights of Man*, Pt. II, 18-19.

as well as ordinary citizens must be subservient. The sovereignty of the people was to be established through a reign of law.

It should be noted that the original state constitutions were brief and simple, in contrast to the bulky and complex documents of the newer states. The fundamental laws of New Jersey and Virginia, adopted in 1776, fill about five printed pages each; the constitution of Oklahoma, adopted in 1907, occupies about 150 pages. The original constitution makers were content with a bill of rights and an outline of the framework of government. Later constitutions contain many sections relating to matters which were either neglected in the eighteenth century, or left to the discretion of the legislature. Besides, many conditions have arisen during the nineteenth century which have led to the extension of governmental control over social and economic questions, and this tendency is reflected in the more elaborate state constitutions of the present time. The distinction between constitutional law and statute law, which was emphasized in the eighteenth century, has largely disappeared in the American states of to-day.

#### 4. THE GROWTH OF UNION

With general uniformity of race, religion, language, and law, with marked similarities in political organization and tradition, and with common problems resulting from economic conditions, the pressure of outside enemies, and the policy of the mother country, it was natural that the colonies should draw more closely together, and in time develop a form of union. As early as 1643 the New England colonies of Plymouth, Massachusetts Bay, Connecticut, and New Haven united in a New England Confederation,<sup>55</sup> especially for the purpose of mutual protection against Indian attacks. These colonies each sent two delegates to an annual conference and furnished their quotas of men and money for defense. This league was for some time an effective agency of inter-colonial action, but broke down because of mutual jealousies after danger from the Indians ceased.

Various plans of colonial union were proposed during the next century. In 1696 William Penn suggested a scheme of colonial union,<sup>56</sup> and several conferences were held by some of the colonies to discuss its possibilities, but the jealousies and diverse interests

<sup>55</sup> W. MacDonald, *Documentary Source Book of American History*, 45.

<sup>56</sup> See his "Plan for a Union of the Colonies," in *Pennsylvania Magazine of History and Biography*, XI, 496 (1887).

of the colonies prevented such action. In 1701, Robert Livingston of New York, in a letter to the Board of Trade, recommended the establishment of a uniform system of government for all the colonies and their formation into three sectional confederacies, a southern, a middle, and an eastern. In 1721, the Earl of Stair proposed a plan of federal union, similar in character to Penn's, but to include the British West Indies as well as the continental colonies. The wars with the French in Canada impressed upon the colonies the need of coöperation, and the government in England urged joint action. In 1754, at the suggestion of the British Lords of Trade, a conference, attended by the seven northern colonies, was called at Albany to form a confederation for mutual defense and especially to devise a plan for preventing the Iroquois Indians from joining the French. At this conference, a plan presented by Benjamin Franklin <sup>57</sup> was unanimously adopted. The Albany Plan of Union proposed a congress composed of one delegate from each colony, with power to make plans for common defense, and to apportion the number of troops and the amount of money to be furnished by each colony. A president-general, appointed by the crown, was to command the forces and administer the common fund. This plan was rejected by the colonies when submitted for their approval and was opposed by the British authorities. Accordingly, nothing tangible came of the conference, though it exerted some influence on the later calling of Continental Congresses.

Some of the most constructive thought on the problem of British imperial reconstruction during the critical period before the Revolution came from the American Loyalists. They recognized the grievances of the colonies as valid and believed that the policy of the British government was wrong, but they desired reform without revolution and viewed the problem as one of imperial reorganization. In the First Continental Congress, Joseph Galloway of Pennsylvania presented a plan for a union of Great Britain and America, which provided for a federation of the colonies under a president-general, appointed by the crown, and a grand council, chosen by the colonial assemblies. These bodies were to form "an inferior and distinct branch of the British legislature, united and incorporated with it" for the exercise of legislative and administrative functions in the colonies. This plan secured the approval

<sup>57</sup> *Writings of Benjamin Franklin*, ed. by A. H. Smith (1907), III, 212. See L. K. Mathews, "Benjamin Franklin's Plans for a Colonial Union," in *American Political Science Review*, VIII, No. 3 (Aug., 1914).

of five colonies, but all references to it were later struck from the minutes of the Congress. In the Second Continental Congress, Franklin proposed the establishment of a confederacy to be called the United Colonies of North America. In this plan the substitution of an executive council appointed by Congress for an executive appointed by the crown showed the progress of events in the dispute with the mother country.

When the Stamp Act was passed, delegates from nine of the colonies met in the Stamp Act Congress of 1765, at the suggestion of Massachusetts, to draw up petitions to the home government on colonial grievances. This Congress proposed no plan of union, but was an indication of the tendency of the colonies to act jointly when their interests were threatened. The repressive acts of 1773-1774, the imposition of new taxes, and the suspension of the Massachusetts charter led to the calling of the First Continental Congress (1774), in which all the colonies except Georgia were represented. This body sent protests to the home government, pledged colonial coöperation in resistance, and provided for a similar congress in the following year.

By 1774 an extra-legal political organization was well developed in the colonies. The Committees of Correspondence formed a powerful political machine, which was operated with much skill. The First Continental Congress, brought into existence by the leaders of these groups, was intended to array colonial opinion against the political purposes of the party in control of the British government. In this Congress an association was formed which signed an agreement to pursue a given course of public action. The Continental Congress was in reality the convention of a political party. While there were factions and cliques in the revolutionary party, especially between the followers of Samuel Adams and those of John Dickinson, all were united for the accomplishment of their general purposes. So vigorous was this group that all except members of its party soon ceased to be active in politics. The Loyalists were disfranchised, and moderates tended to refrain from participation.

While the movement for independence created a national political party and temporarily overshadowed all other issues, the significant alignment between the eastern and western sections of the up agreements for their own government and pushed their claims colonies remained, and the demand for a wider suffrage and for equality of representation continued. The Western settlers drew

to share in the general government of the new states. With the success of the revolutionary movement, the contest between the capitalists of the East and the democratic pioneers was renewed in the struggle over the Constitution. Before the Second Continental Congress assembled in 1775, hostilities with the mother country had begun. This body, in which all the colonies were represented, assumed of necessity general direction of the colonial cause. It called upon the colonies for troops and supplies, issued paper money, and appointed Washington to command. On July 4, 1776, it adopted the Declaration of Independence, and on November 15, 1777, it attempted to secure for itself a more legal basis by adopting the Articles of Confederation and Perpetual Union,<sup>58</sup> a scheme of government which had been prepared by one of its committees. This document was sent to the state legislatures for ratification, was ultimately adopted by all of them, and went into effect in 1781. This step was the end of a long process by which the thirteen American political communities were gradually brought to a realization of their common interests, and was the starting point from which a far more complete and permanent union was later evolved.

The Continental Congress of the Revolutionary period was not a sovereign body, but a sort of "steering committee" for war. When allegiance to Great Britain was severed, it was to the states that the new allegiance was thought to be due. Madison in 1782 declared that it was "extravagant" to maintain that "the rights of the British Crown devolved on the Continental Congress." John Adams called the Continental Congress a "diplomatic body." Political machinery for union lagged behind the growing consciousness of national unity and of common purpose and destiny. The desirability of union was frequently expressed. Jefferson, in addressing Governor Dunmore in 1775, referred to the union that the colonies had formed and the necessity of its continuance. John Adams, a little later, confessed that the states could not exist alone, but must "raise an empire of permanent duration." All agreed that a general government was necessary, but no such agreement existed as to the powers which should be conferred upon it. Dr. Rush of Pennsylvania made an eloquent plea for nationalism as opposed to state sovereignty, but in the making of the Articles of Confederation federalism triumphed, though experience under that instrument led to a rapid growth of nationalism.

While the union under the Articles of Confederation was to be

<sup>58</sup> W. MacDonald, *Select Documents*, No. 2.

“perpetual,” enduring in peace as in war, it was in reality a loose league in which each state retained its sovereignty and independence. Governor Cooke of Rhode Island, in order to guarantee the retention of sovereignty by the states, significantly called the Articles the “Treaty of the Confederation.” Centralization of government was opposed on the ground that it was a continuation of the “imperial organization” policy of the Tory government of England. The states retained all rights not specifically delegated to the confederation, and unanimous consent was required for any amendment of the agreement. The only common organ of government was a congress in which each state, regardless of population and wealth, had one vote; and an overwhelming majority was required for the passage of any measure of importance. No common executive or judiciary was created. The powers of the Congress were few. It was authorized to conduct the war and to control foreign relations. It might request the states to furnish men and money, but could not compel them to obey. It had no power to tax, to regulate trade among the states or abroad, or to settle disputes among the states. The people feared strong and centralized government, and the feeling of national unity was not yet sufficiently developed to permit a strong union.

Conditions drifted rapidly toward anarchy. The unrest of the period was evidence of the lowering of the moral tone of a population that seems to be an inevitable aftermath of a great war. Sober writers of the period referred to the increase of crime, the disrespect for tradition and authority, and the restlessness of the young. The country was flooded with paper money, the cost of living was high, and discontent was active. Debtor and creditor were arrayed one against the other, and the farmer and merchant classes were bitterly hostile. In every state the debtor class clamored for relief, demanded a release from taxes, the suspension of the collection of debts, and the issue of paper money. The contest between the moneyed class and the impoverished masses became so bitter that it led to rioting and mob demonstrations that in some cases actually approached civil war.<sup>59</sup> Such radical ideas as the abolition of taxes, and the common ownership of property were seriously put forward. The infant manufactures which had sprung up during the war were being destroyed by the price-cutting competition of British manufacturers, and the Confederation had

<sup>59</sup> For example, Shays's Rebellion in Massachusetts in 1786. See E. Bellamy, *The Duke of Stockbridge* (1901).



no power to protect home industry by a tariff. The soldiers were unpaid and dissatisfied, the interest on the national debt could not be met, and public credit was worthless. Economic conditions were disorganized and each state clamored for tariffs against its neighbors. Foreign nations refused to make favorable commercial treaties because they were not willing to deal with each state separately. Jefferson wrote from Paris: "We are the lowest and most obscure of the whole diplomatic tribe." Boundary disputes were numerous, and the states quarreled over the control of the Western lands. The spirit of unity, necessary under the stress of war, diminished and each state turned to the settlement of its own problems.

The feeling between the settlers on the Western frontier and the merchants and bankers of the East was especially bitter. The Western pioneers wanted the free use of the Mississippi, to which Spain was opposed. The Eastern states desired favorable commercial treaties with Spain, had no interest in the Mississippi trade, and opposed the Western migration, which drained off men from the industries of the East, made labor more expensive, and brought new and cheaper land into competition with the older settlements. The Western settlers threatened to throw off their allegiance and set up a new state; and Jefferson wrote in 1786 that the disposition to close the Mississippi gave him "serious apprehension of the severance of the eastern and western parts of our confederacy."

There were even some who despaired of the continuation of republican government. James Monroe declared that some of the leaders of the period "entertained principles unfriendly to our system of government" and meant to make a change in it, and that they were disappointed in not getting the assent of Washington.<sup>60</sup> Madison in 1787 wrote of the "propensity toward monarchy," produced by the turbulence of the times; and Jay, in a letter to Washington, expressed the fear that "if faction should long bear down law and government . . . the more sober part of the people may even think of a king." Advances were even made to Prince Henry of Prussia, who firmly declined to attempt to make good in the office in which George III had recently failed.<sup>61</sup>

One of the chief defects of the Confederation was the fact that the Congress could deal only with the states and not directly with

<sup>60</sup> *Works*, V, 343.

<sup>61</sup> See letter written by Prince Henry to Baron Steuben, in *American Historical Review*, XVII, 47 (Oct., 1911).

the people. That was a fundamental weakness, which was summarized by Washington when he wrote: "I do not conceive that we can exist long as a nation without having lodged somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the State governments extend over the several states." Nevertheless, the Congress of the Confederation, in spite of its meager authority, accomplished much. It maintained the army until success was assured. It negotiated the Peace of 1783, in which independence was recognized and the territory to the Mississippi was secured. It kept alive the spirit of unity during a critical period until necessity forced the states to create a more perfect union and a stronger central government. It induced the states to give up their claim to the Western lands, and passed the famous Ordinance of 1787<sup>62</sup> in which the foundation of our territorial policy was outlined. As early as 1780 the Continental Congress laid down the fundamental principles of early American colonial policy. They voted that the lands "shall be disposed of for common benefit of the United States," whereby the nation was pledged against a system of permanent national ownership; that the lands "shall be granted or settled at such times and under such regulations as shall hereafter be agreed on by the United States in Congress assembled," thus asserting the right to govern territory; and that this territory "shall be settled and formed into distinct republican states, which shall become members of the Federal Union." The Ordinance of 1787 provided for territorial governments in the Northwest with "admission to a share in federal councils on an equal footing with the original thirteen states at as early periods as may be consistent with the general interests." It pledged the states made from this territory to perpetual adherence to the Union. It guaranteed liberty of belief, and prohibited entail of property and the introduction of slavery. It made provision for public education and extended the rights of habeas corpus, jury trial, due process of law, and the sanctity of contracts to the new region. Daniel Webster once said in the Senate: "I doubt whether any single law of any lawgiver ancient or modern has produced effects of more distinct and lasting character." The Ordinance of 1787 belongs with the Declaration of Independence and the Constitution as one of the great foundations of American constitutional liberty.

Various attempts to strengthen the Confederation failed. As

<sup>62</sup> W. MacDonald, *Select Documents*, No. 4.

early as 1780, Hamilton, in a letter to James Duane, pointed out the defects of the Confederation and attributed them ultimately to state sovereignty. He argued that Congress should have complete authority in all that relates to war, peace, trade, and finance. In a remarkable series of papers,<sup>63</sup> which were published in 1781 and 1782, Hamilton probed the defects of the Articles to their roots and urged that the federal government should be given powers of taxation, commercial regulation, and disposal of ungranted land. In 1783, Pelatiah Webster published a pamphlet<sup>64</sup> in which he urged the establishment of a "supreme authority" with power to levy taxes directly and to send troops into any state to enforce its acts. He urged a federal legislature of two houses, and "ministers of state" whose advice must be taken by the federal legislature. He proposed the creation of a "chamber of commerce" whose recommendations must be taken by Congress on all measures affecting trade. In the same year, Washington, in his Circular Letter to the governors of the states, urged the need for a supreme central power to regulate the general concerns of the country. In 1785 Noah Webster<sup>65</sup> proposed the establishment of a federal government on the model of the state governments. He believed that Congress should have the same power to compel obedience to its laws as the state legislatures had in their jurisdictions, and that a President should be given executive authority similar to that of the state governors.

Congress itself in 1786 stated that a crisis had arrived and placed the facts plainly before the states. An unsuccessful attempt was made in the same year to hold a convention of the states at Annapolis to create a uniform system of commercial regulations. Finally, Alexander Hamilton suggested an attempt on a broader scale. He and other leaders believed that the states would take more interest in a conference to undertake a general revision of the Articles of Confederation. Accordingly, resolutions were adopted asking the states to send delegates to Philadelphia in 1787 in order to "take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union, and to report such an Act

<sup>63</sup> *The Continentalist*.

<sup>64</sup> *A Dissertation on the Political Union and Constitution of the Thirteen United States of North America*.

<sup>65</sup> *Plan of Policy for Improving the Advantages and Perpetuating the Union of the American States*.

for that purpose to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the legislatures of every State, will effectually provide for the same." Leaders such as Washington, Madison, and Franklin lent their support to this plan, and the work of this convention, ignoring its instructions to revise the old system, was the preparation of a new constitution and the establishment finally of a real union.

## 5. BEGINNINGS OF AMERICAN FOREIGN POLICY

Perhaps no country in the world has arisen to greatness in the family of nations with so little conscious attention to foreign policy as the United States. This was due largely to its favorable position. It was remote from Europe and had little interest in the dynastic diplomacy of the Old World. With no strong neighbors it was able to expand without expensive and dangerous wars. It was in a position to sell its products abroad, especially foodstuffs and cotton, without dangerous competition. These conditions have now largely disappeared and foreign policy has grown rapidly in importance and will inevitably become a more prominent and a more complicated phase of American political thought in the future.

As long as the American colonies were a part of the British Empire, they were pawns of European diplomacy. European statesmen regarded them as weights to be used in adjusting the balance of power. Wars of England with France, Spain, and Holland were echoed in colonial wars, especially those between the English colonists and the French in Canada. Victories in America were often traded off by the mother country for land in India or balanced against defeats elsewhere. These wars, however, finally secured British supremacy in North America, and laid the foundation for boundary disputes which became important later in the history of the United States. Peaceful diplomatic relations were also carried on by the colonies. As early as 1644 the agents of Massachusetts Bay and the French governor of Acadia agreed to a treaty of free trade.<sup>66</sup>

The diplomatic history of the United States began with the Declaration of Independence. That document stated that the new nation assumed among the nations of the earth a separate and equal station, so that the states of which it was composed were now

<sup>66</sup> *Records of the Colony of New Plymouth*, IX, 59-60.

free and independent, having full power to levy war, to conclude peace, to contract alliances, to establish commerce and "to do all other acts and things which independent states may of right do." Lacking an executive, the Continental Congress appointed a "Committee on Secret Correspondence" to carry on diplomatic relations with other countries, especially with France, whose desire for revenge against England made her willing to aid the colonies, at first secretly, later by open alliance.<sup>67</sup> The vogue of America in France rested largely on the belief that in that far-off land the vision of Rousseau was being materialized. American leaders, such as Patrick Henry and Samuel Adams, were appealing in their sentiments and eloquence, and in a considerable section of French society liberalism was fashionable. Besides, the disintegration of the British Empire would affect the balance of power favorably to France. In 1777 the committee on Secret Correspondence was replaced by a committee on Foreign Affairs, and later Spain also was induced to give aid.

Of the agents who were sent abroad by the United States, Benjamin Franklin in France was especially successful. He was personally popular, and appealed strongly to the intellectual class in French society. He interpreted the American Revolution as a fulfilment of the prophecies of the French Encyclopedists,<sup>68</sup> and as a practical application of the political doctrines which were then becoming popular. His piquant sayings and writings caught the public attention; pictures of him were everywhere for sale. In his honor was coined the famous verse: "He snatched from Heaven the thunderbolt; the scepter also from tyrants." Of his influence in France, Jefferson wrote later: "He possessed the confidence of that government in the highest degree, insomuch that it may be truly said that they were more under his influence than he under theirs."<sup>69</sup> Through his efforts American diplomacy gained recognition of independence and military aid from an open ally. Military supplies and manufactured goods were furnished in indirect ways to the revolting colonies by several countries of Europe, and loans were secured abroad, especially from bankers of the Dutch Republic. Various treaties of amity and commerce were negotiated by the colonies with European nations in an effort

<sup>67</sup> J. B. Perkins, *France in the American Revolution* (1911). E. S. Corwin, "The French Objective in the American Revolution," in *Amer. Hist. Rev.*, XXI, 33 (1915).

<sup>68</sup> E. J. Lowell, *The Eve of the French Revolution* (1892), Chs. xvi-xviii.

<sup>69</sup> E. E. Hale and E. E. Hale, Jr., *Franklin in France* (2 vols., 1887-1888).

to break the monopoly which England possessed through her control of the sea.

Thus in the early period of American history, both as British colonies and in the struggle for independence, foreign interests were important; and during the Revolutionary period the Americans were eager to make treaties and alliances with European nations in order to guarantee the independence they had declared.<sup>70</sup> With the end of the war the task of American diplomacy was not to win allies and aid, but to draw up the terms by which Great Britain would recognize the new nation. Before the ratification of the Articles of Confederation, several of the states tried to engage in independent diplomatic intercourse, but the Articles provided that the United States in Congress assembled should have the sole right of conducting international relations and conversing with foreign powers. The states were, however, permitted to retain jurisdiction over foreign commerce. The right to be independent members of the family of nations was from this time denied to the separate states. The Articles of Confederation were contradictory in that, while guaranteeing to each state its sovereignty and independence, they took away from the states the most characteristic mark of external sovereignty and independence—the right to control foreign diplomacy. A Department of Foreign Affairs was established even before the Articles of Confederation were ratified by all the states.

While the Congress of the Confederation instructed the American Commissioners in their peace negotiations to act jointly with our European allies, and “to undertake nothing in the negotiations for peace without their knowledge and concurrence,” it was soon apparent that France and Spain were playing their own game. France was looking forward to the time when she could recover Louisiana and again become an American power. Spain had no desire to see the Americans expand into the Mississippi Valley and threaten her empire in the Southwest. Both were willing to sacrifice the United States in the interests of their European diplomacy. Accordingly, the American Commissioners ignored their instructions, negotiated separately with England, and by skilful diplomacy secured recognition of their independence with boundaries reaching to the Mississippi. Franklin, Jay, and Adams were the arch expansionists of the period. In this way

<sup>70</sup> F. Wharton, *Revolutionary Diplomatic Correspondence* (6 vols., 1889); *The Secret Journals of Congress* (4 vols., 1821).



the Western lands were secured which played so large a part in the growth later of the spirit of democracy and of nationalism.

The British were interested in the restoration of property confiscated from Tories during the war, and in the payment of debts owed to British merchants by colonial merchants previous to the war. The Americans desired payment for damages wrought by the British army during the war, and the right to fish off the Newfoundland banks. On these points compromises were made, which led to long disputes in later years. The Americans agreed that "Congress would earnestly recommend to the legislatures of the respective states" the restitution of the property of the Loyalists, and that no impediment should be thrown in the way of the recovery of debts lawfully contracted previous to the war. The British agreed that the Americans should have the right to fish beyond the three-mile limit and that they should have the liberty of the inshore privileges previously enjoyed, such as getting bait and water, and drying their fish. On the northeast and the northwest, boundary lines were drawn which had little relation to the facts of geography and which caused disputes for a half-century. The French agreed reluctantly to the terms of the treaty, and Spain secured from England the restitution of Florida, but with a dispute as to its boundaries which created difficulty later with the United States.

Under the Articles of Confederation, American diplomacy was weak because of the difficulty of the problems facing the new nation and because the American Department of Foreign Affairs was responsible to a Congress which had no power to enforce obligations made by diplomats in its behalf. Congress could not pay the foreign bankers who had lent money during the Revolution and could not negotiate new loans. Spain plotted to detach the Southwest from the United States, and found considerable sympathy among the Americans who were settling in Kentucky and Tennessee and who were interested in the privilege of navigating the Mississippi. As early as 1780 John Jay said: "The Americans almost to a man believed that God Almighty had made that river a highway for the people of the upper country to go to the sea by." England excluded the Americans from the profitable West Indies trade, and refused to give up her trading posts on the Great Lakes until her debts were paid and her Loyalists compensated.<sup>71</sup> The

<sup>71</sup> A. C. McLaughlin, "Western Posts and British Debts," in *Amer. Hist. Assoc. Report*, 413-445 (1894).

Mediterranean trade was closed by the depredations of the Barbary pirates, who had been placated in colonial times by the British payment of tribute, but who disregarded the protests of the new American states. Commercial depression was intensified by the helplessness of the thirteen separate states, each trying to regulate trade and to retaliate in different ways against British commercial supremacy. The weakness of our position in foreign relations was one of the strongest arguments that could be used in support of the establishment of a stronger union and a more vigorous national government.<sup>72</sup>

It was also natural that our early experience in foreign affairs should strengthen the belief, created by our actual situation, that the United States had interests distinct from Europe, that we had little to gain and much to lose by entanglements with foreign powers, and that our proper policy was one of isolation in world affairs.

Thomas Pownall, who was governor of Massachusetts from 1757 to 1760, and a member of Parliament from 1763 to 1781, had an instinctive grasp of American political tendencies. In 1780<sup>73</sup> he pointed out the future greatness of the United States and its inevitable rise to empire. In 1783<sup>74</sup> he stated the policy which he believed fundamental to American success, "that as Nature hath separated her from Europe, and hath established her alone, as a sovereign, on a great continent, far removed from the Old World and all its embroiled interests, that it is contrary to the nature of her existence, and consequently to her interest, that she should have any connections of Politics with Europe other than merely Commercial." These words were repeated almost verbatim by Washington in his Farewell Address.

One question, which continues to vex some nations, was early settled by the United States. That was the relation of a portion of its subjects to a non-resident religious authority. Expecting that the new nation would desire to free its Catholic citizens from English control, the papal nuncio at Paris in 1783 proposed to Franklin that Congress consent to the appointment in America of a bishop or apostolic prefect. Franklin properly replied that neither Congress nor any state could take action on such a matter, but that a dignitary so appointed would undoubtedly be welcomed.

<sup>72</sup> *The Federalist*, Nos. 22 and 63.

<sup>73</sup> *A Memorial, most humbly addressed to the Sovereigns of Europe, on the Present State of Affairs, between the Old and New World.*

<sup>74</sup> *A Memorial addressed to the Sovereigns of America.*

At first a proposal, eagerly supported by the French government, was made to exercise Roman control through a French ecclesiastic, but after testing the sentiment of American Catholics, an American bishop was appointed.<sup>75</sup>

A similar adjustment was made with the Church of England. The American members of that church naturally desired that national independence should be reflected in a national church organization. Since there were no bishops in America, it was necessary to have recourse to the mother country in order to obtain consecration. A bishop must swear allegiance to the English crown, and colonial opposition to the appointment of a bishop in America had been widespread. The first episcopal bishop in America was consecrated by a small independent branch of the Anglican church in Scotland; but American opposition died down, and in 1787, largely through the unofficial efforts of John Adams in England, two American bishops were consecrated by English bishops without the hampering oath. Religion was thus freed from foreign government control and from interference by the home government, and played no important part in diplomacy until the question of protecting American missionaries abroad arose later.

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## 118 HISTORY OF AMERICAN POLITICAL THOUGHT

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## CHAPTER V

### THE CREATION OF THE CONSTITUTION

#### 1. BACKGROUND OF THE CONSTITUTION

Many motives were combined in the minds of those who framed the American Constitution and who worked zealously for its adoption. Experience under the Articles of Confederation made evident their chief weaknesses and pointed out the main lines of needed reform. The instability of the times impressed upon the substantial elements of the country the imperative need for a stronger government. The radicalism and lawlessness that prevailed led many to welcome any movement that promised a restoration of order and security. The affronts offered to the United States by foreign nations led patriotic Americans to demand a government that could command respect abroad. In particular, the propertied class desired a vigorous national government in order that property rights and contracts might be secure, investments be safe, and business and commerce be prosperous. Patriotic motives and intelligent self-interest were mingled, and the group that favored the Constitution were convinced that the changes they advocated would be beneficial both to their own personal interests and to the nation at large.

Various classes were drawn together by the economic chaos of the period. Those who had invested in Western lands believed that their low value was in large measure due to the uncertainty of legal title and to the lack of military protection on the frontier. Those who held the depreciated public securities, issued in return for Revolutionary loans, desired a government with sufficient financial power to guarantee the redemption of those securities and the payment of interest. Men with capital to invest found no profitable opportunity as long as the states could issue worthless paper currency or annul private contracts. Merchants, manufacturers, and shipbuilders could not prosper unless the government were able to enact tariffs, pass navigation acts, and negotiate favorable commercial treaties. The plantation owners of the South demanded a government with sufficient power to put down slave

revolts and to insure the return of fugitive slaves. Such motives inevitably consolidated into a compact group men of large material interests and led them to give united support to the creation of a strong government. According to John Adams: "The federal convention was the work of the commercial people in the seaport towns, of the slave-holding states, of the officers of the revolutionary army, and the property holders everywhere." Its members were not political visionaries, but practical men of the world who desired a system that would be effective and workable. Opposition came from the farmers and laborers, from the rural and frontier sections of the population, who saw in the Constitution an effort of the moneyed class to impose its rule on the masses and to use the government in support of its private enterprises. Opposition came also from the supporters of states' rights, who saw in the process of centralization a continuation of the imperial organization policy of the British Tories.

The Constitution, as finally framed, contained provisions for the safeguarding of practically every interest demanded by the conservative classes. The intricate checks and balances of the new system were intended to prevent the whims and passions of the populace from controlling the government. Large power to raise revenue was given to Congress and the debts of the Confederation were made an obligation on the new government. Congress was given power to raise and maintain military and naval forces as a defense against domestic disturbance and foreign foes. The right to enact protective tariffs and to prevent tariff barriers among the states was given to Congress through its control over foreign and interstate commerce. The power to make treaties was also restricted to the national government. The states were forbidden to issue paper currency, to make anything but gold and silver legal tender, or to make laws impairing the obligation of contracts. By such provisions the financial follies of the states might be prevented, the economic interests of the propertied classes safeguarded, the prosperity of business restored, and the disturbances of the earlier period brought to an end.

The changes in political conditions between the period of 1776 and 1787 were accompanied by marked differences in the tendencies in political thought.<sup>1</sup> The period of the Revolution had been

<sup>1</sup>E. S. Corwin, "Progress of Constitutional Theory Between the Declaration of Independence and the Meeting of the Philadelphia Convention," in *American Historical Review*, XXX, 513 (Apr., 1925).



largely one of criticism and destruction. It required a philosophy of politics that could justify rebellion. It demanded a type of leader who could coin phrases that would appeal to popular emotion and who could arouse public enthusiasm by broad generalizations concerning the rights of men. The men who led the revolt against Great Britain and who kept alive the spirit of revolution were bold and radical thinkers. They were not, in general, men of large property interests or of much practical business experience. In a time of disorder they consistently emphasized personal liberty rather than political control. They associated strong government with monarchy, believed that centralized power was an evil to be jealously guarded against, and pushed to extreme limits the doctrine of individual rights. They wished to defend the individual against official interference and to preserve a large sphere of local autonomy to the separate states. They preferred occasional riots and disorders to too much government.

The new era was one of constructive effort. It was guided by the firm purpose of establishing a strong national government. It demanded a practical point of view and a less radical attitude. As usual after a revolution, a conservative reaction set in, and a new type of statesman came into prominence.<sup>2</sup> Patrick Henry was elected to the federal convention but refused to attend because he "smelt a rat." The general attitude of Otis, Jefferson, and Samuel Adams was replaced by that of Hamilton, Madison, and Jay. An intelligent and united class, conscious of a solidarity of interests and more favorable to the system of class rule and centralized power, determined to reconstruct the political system. Emphasis was laid on the necessity for law and order so that the turbulence of the Confederation period might be brought to an end. Property rights were given more attention, and the rights of man fell into the background. Confidence in the ability of the masses to govern themselves satisfactorily was rudely shaken. The Hartford Wits<sup>3</sup> attacked bitterly the leveling tendencies of the agrarian party; and Jacobinism, atheism, and democracy were associated in terms of reproach.

This change in sentiment was evident in the debates in the Constitutional Convention and was reflected in the Constitution itself. In the Convention Gerry asserted that "the evils we experi-

<sup>2</sup> Only six of the fifty-six men who signed the Declaration of Independence had a share in making the Constitution.

<sup>3</sup> In the *Anarchiad* (1787). See also T. G. Fessenden, *Democracy Unveiled, or Tyranny Stripped of the Garb of Patriotism*.

ence flow from the excess of democracy,"<sup>4</sup> and that the ignorant people were deceived by pretended patriots. He confessed that he had been too confident of the value of republican government and that he had been taught by experience of the danger of the leveling spirit. Randolph stated that the evils of the day had their origin "in the turbulence and follies of democracy."<sup>5</sup> Hamilton wrote that "all communities divide themselves into the few and the many. The first are the rich and the well born and the other the mass of the people who seldom judge or determine right." John Marshall wrote later: "They have truth on their side who say that mankind is incapable of governing himself." The Constitution was much less democratic than the earlier state constitutions. The executive was to be elected indirectly, was given a four-year term with indefinite reëligibility, and with far greater powers than the governors of the states. The Senate was to be indirectly elected for a six-year term. Only the lower house of Congress was to be chosen by direct popular election. The judiciary received broader powers, and was to be appointed for life tenure. No bill of rights was included in the original Constitution. John Dickinson contended that a bill of rights could have no proper place in a federal constitution;<sup>6</sup> and Benjamin Rush went so far as to say: "I consider it an honor to the late Convention that this system has not been disgraced with a bill of rights. Would it not be absurd to frame a formal declaration that our natural rights are acquired from ourselves?"<sup>7</sup> In its leading features the new instrument of government was decidedly conservative.

The convention that framed the American Constitution was composed of men rich in political experience and practical knowledge, and endowed with a profound insight into human nature and the essence of government. All its members had received training in politics. Among the leaders were men skilled in the law, familiar with finance, experienced in administration, and learned in the political philosophy of their own and of earlier times. They were not interested in fine notions about democracy and equality, but strove with all the political wisdom at their command to set up a stable and efficient system that would avoid despotism on the one hand and the unrestrained turbulence and folly of the ignorant

<sup>4</sup> *The Madison Papers*, II, 753.

<sup>5</sup> *Ibid.*, II, 758.

<sup>6</sup> *Letters of Fabius* (1787).

<sup>7</sup> Cited in McMaster and Stone, *Pennsylvania and the Federal Convention*, 295.

masses on the other. They wished to preserve the spirit and form of popular government, and at the same time place actual control in the hands of the "natural aristocracy." They believed that "property was the main object of society" and that its protection against the radical tendencies of the propertyless masses was one of the main purposes of government. The Senate in particular was intended to preserve the rights of property and the interests of the minority against the demands of the majority;<sup>8</sup> the new political system was frankly based on the actual conditions of "natural inequality."<sup>9</sup>

## 2. COMPROMISES IN THE CONSTITUTION

The vital question before the members of the Convention was whether they should attempt to revise the Articles of Confederation, as their instructions provided, or whether they should make a new constitution. Many thoughtful persons agreed with the hope of Washington that the convention would "adopt no temporizing expedients," but would probe the defects of the Articles of Confederation to the bottom and provide a radical cure. Paterson argued that the delegates were bound by their instructions and must return to their states to obtain larger powers. Randolph, however, declared that he "was not scrupulous on the point of power. When the salvation of the Republic is at stake, it would be treason to our trust not to propose what we found necessary." With this view Hamilton agreed. "We owe it to our country to do in this emergency whatever we deem essential to its happiness." Both points of view were strongly urged in the Convention and plans based on each were presented for consideration.<sup>10</sup> Virginia had taken the lead in calling the convention and its delegates felt under obligation to present a concrete plan for discussion. The Virginia plan,<sup>11</sup> prepared by Madison, the ablest American student of federal institutions, was the first to be submitted. It aimed at a thorough reconstruction of the system of government, and provided for a national executive and judiciary, and a national legislature of two houses. In both houses voting was to be proportioned

<sup>8</sup> J. Elliot, ed., *Debates on the Adoption of the Federal Constitution* (1836).

<sup>9</sup> *The Federalist*, No. 10.

<sup>10</sup> M. Farrand, ed., *The Records of the Federal Convention* (1911).

<sup>11</sup> A plan similar to the Virginia plan was presented by Charles Pinckney of South Carolina, but was not discussed in detail by the Convention. See Pinckney's "Observations on a Plan of Government Submitted to the Federal Convention," in Farrand, *Records*, III, 106.

among the states according either to the number of free inhabitants in the state, or to its quota of contribution, or both.

Strong objection to this plan arose from the members who were attached to the rights of the states, and who opposed the establishment of such an elaborate national organization. The representatives of the small states in particular opposed the proposal to substitute voting in Congress in accordance with population in place of the equal vote of each state. These elements prepared a counter-proposal, the New Jersey plan, based on a "purely federal" principle. It looked to the amendment of the existing system, provided for an executive council to be chosen by Congress, but retained a national legislature of one house in which each state had one vote. Discussion of these plans split the Convention into two distinct groups. One favored a strong national government and believed that political power should be apportioned among the states in proportion to their ability to bear public burdens; the other held that the states were sovereign and equal, and opposed the subordination of the small states to their more populous neighbors. The group that favored a strong national government leaned toward political realism. They avoided the high-sounding principles of the Revolution, and were not interested in abstract liberty or equality. Practical considerations and expediency seemed to them more important. The group that opposed a strong national government drew heavily on the old arguments of natural law and social contract. They argued that, if the Confederation were broken up, the states returned to their position of sovereignty and equality. The union of the states was based upon the same principle of contract as that among individuals in forming a society.

The Convention finally adopted in principle the plan of the large states. It decided to abandon the Articles of Confederation and to draw up a new constitution resting on a broad national basis. It voted "that a national government ought to be established consisting of a supreme legislature, executive, and judiciary." The debates of the Convention show clearly that it was the desire of a majority of its members to establish a supreme national government. Gouverneur Morris pointed out the difference between a "federal" and a "national supreme" government. The former was a mere compact resting on the good faith of the parties; the latter had a complete and compulsive operation. He added that in all communities there must be one supreme power and one only. Madison observed that the equal vote of the states, which was

suitable as long as the union was a federal one among sovereign states, must cease when a national government was put in its place. Read of Delaware went so far as to say that the national government must of necessity soon swallow up the state governments; and Wilson of Pennsylvania argued that the colonies did not become independent separately but unitedly. Hamilton went even further in supporting a supreme national government. He wished to give Congress the power to legislate on all questions and to have the state executives appointed by the general government. He even proposed "to abolish and annihilate all state governments, and to bring forward one general government, over this extensive continent, of a monarchical nature, under certain restrictions and limitations." Luther Martin of Maryland, in withdrawing from the Convention, contended that the plan adopted was a national, not a federal, government, and one designed not to protect and preserve, but to abolish and annihilate the state governments.

The decision to create a supreme national government involved important corollaries. It meant that the powers of the national government should be decidedly increased; that the machinery of the national government should be enlarged; that the national government, as well as the state governments, should operate directly on the people through its own laws, officials, and courts; and that the new Constitution should be the supreme law of the land, enforceable in the courts, and superior to all other constitutions and laws in conflict with it. This made it unnecessary to provide any means of forcibly coercing recalcitrant states, as all the original plans had contemplated. The national government could view any opposition to it as the act of individual citizens, and not the act of a state.<sup>12</sup>

Having been successful in securing the adoption of their fundamental idea, the supporters of a strong national government were willing to make concessions to the opposition. A bitter struggle was waged over the composition of Congress. The large states desired representation according to population; the small states demanded equal representation. At a critical point in the discussion a proposal known as the "Connecticut Compromise" was adopted.<sup>13</sup> It provided for equal representation of the states in

<sup>12</sup> The Civil War was waged on the theory that the Union was suppressing rebellion on the part of citizens, not of states, though this theory was not logically followed in the reconstruction period.

<sup>13</sup> This proposal, often attributed to Franklin, was suggested early in the proceedings, but was formally introduced by Dr. Johnson of the Connecticut

the upper house, and representation proportioned to population in the lower house, with the additional proviso that all bills for raising revenue should originate in the lower house. The purpose of this compromise was to make the general government "partly federal and partly national." Hamilton said: "The equal vote allowed to each state is at once a constitutional recognition of the sovereignty remaining in the individual states and an instrument for preserving that residuary sovereignty."

This decision led to a new controversy over the question of how population should be computed for the purpose of apportioning members of the lower house. The difficulty arose over the question of whether slaves were persons or property. For the purpose of increasing their representation in Congress, the Southern states insisted that slaves should be counted as persons; the Middle and Northern states, having few slaves, argued that they should not be included in computing population. A practical, but illogical compromise was reached in agreeing to count three-fifths of the slaves. This "federal ratio" had been suggested by the Congress of the Confederation in 1783 in a proposal to apportion financial contributions from the states according to population, counting three-fifths of the slaves for the purpose, and had been accepted by eleven states as an amendment to the Articles of Confederation.

A further controversy arose over the power of Congress to regulate foreign trade. The Northern states, with large commercial interests, had suffered most from the commercial anarchy of the Confederation period, and wished to give the national government large powers over trade and navigation. The agricultural Southern states feared that if Congress possessed such power it might levy export taxes on the products of the South or interfere with the further importation of slaves. An agreement was finally reached by which Congress was given general powers over navigation and foreign trade, with the right to levy taxes on imports; but a tariff on exports was prohibited, and provision was made that no interference with the slave trade, save for a small head tax, should be permitted before 1808.

No subject before the Convention drew forth more differences of opinion than the character of the executive. Whether it should be single or plural, what powers should be conferred upon it, and delegation, and was ably supported by the members from Connecticut, a middle-sized state which favored a stronger union.



how it should be chosen were all subjects of lively discussion. Differences of opinion on these questions divided the members along new lines. To the lines of cleavage between large and small states and between the North and the South was added the more fundamental distinction between aristocracy and democracy. A few of the more liberal members favored direct election; but men whose faith in mankind had been shaken by the events of recent years, and whose belief in a natural aristocracy of birth and breeding had been strengthened by the excesses of the mob, opposed the principle of popular election and insisted upon some form of indirect choice. After many proposals, the Electoral College, in which the compromise between large and small states was continued, was agreed upon. It was supposed that in many cases no election would result because of the failure of any candidate to secure a majority; hence arrangement was made in such cases for choice by the lower house, with the proviso that it should vote by states, each state having one vote.

Less serious difference of opinion arose over other questions. The method of choosing Senators, the appointment and status of the federal judiciary, the method of admitting new states, the control of the national government over the state militia, and the method of amending the new Constitution were among the most important issues to be decided. So completely had the process of annexing and governing new territories been worked out in the Ordinance of 1787, before the adoption of the American Constitution, that in the federal and state conventions of 1787 and 1788 almost no reference was made to annexation or to territorial government. The clause giving Congress power to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" passed without debate, because it registered the practice under the Confederation. The danger that men feared was the loss of territory. What Patrick Henry and others especially feared was that "the Senate, by means of a treaty, might alienate territory." The framers of the Constitution understood that the power of Congress to make war included the power to conquer territory, and that the power to make treaties included authority to annex by peaceful means. Not until later was the constitutionality of acquiring new territory questioned. Few members of the convention were wholly satisfied with the finished document; but on September 17, 1787, thirty-nine of the original fifty-five members signed it, and sub-

mitted it to the Congress of the Confederation with the recommendation that it be submitted in each state to a convention chosen by the voters, and that it should go into effect when ratified by nine of the states. The purpose of the first proposal was to secure a more popular basis than would result from ratification by the state legislatures; of the latter, to prevent a few recalcitrant states from delaying adoption. Congress accepted both recommendations and on September 28 transmitted the Constitution to the states for their decision.

While the discussion in the Federal Convention showed clearly the difference of opinion between the representatives of the large states and those of the small states, and between those of the North and those of the South, and while the Constitution as finally framed was a "bundle of compromises," nevertheless on fundamental questions the members of the Convention were in general agreement. In the country at large the main line of cleavage was into two factions, with the division drawn along economic lines. The hostility between rich and poor, creditor and debtor, merchant and small farmer was so keen that many intelligent observers feared for the future of American institutions. Madison recognized the economic background of division, stating that "the most common and durable source of factions has been the various and unequal division of property. Those who hold and those who are without property have ever formed distinct interests in society." This cleavage was scarcely represented in the Convention. The majority of its members were lawyers, closely associated with the business interests of the country. They spoke for but one of the two parties into which the people were at that crisis divided. The disputes in the Convention were mainly over political details. On the fundamental questions there was little disagreement in the Convention. The great majority agreed that it was necessary to establish a national agency endowed with extensive political power. There was no serious controversy over the proposals to give the national government power to raise revenue, to borrow money, and to regulate foreign and interstate commerce, nor upon those that validated the debts incurred previously and forbade the states to emit bills of credit or to impair the obligation of contracts. There was general agreement that democracy was a dangerous thing, to be discouraged and to have as little voice as possible in the new system.

The framers of the American Constitution did not invent new

political forms, nor did they borrow political ideas far afield. Many had read history and could cite the failures of ancient confederations or could make comparisons with the governments of European states. Some had read the works of Continental writers on politics; but this knowledge taught them what to avoid rather than what to adopt. In so far as they drew upon European sources, their ideas were derived from the English common law, the principles of Magna Charta and the English Bill of Rights, and the writings of Locke and Blackstone. This tradition had passed to America in colonial times and was deeply imbedded in the political institutions and usages of the states. The Constitution was based upon the political experience of the Americans in the Colonial and Revolutionary periods. It was a brief, simple document, prepared by practical men to meet the actual needs of the times, and to remedy defects which had become obvious under the Confederation. As John Adams said: "It was extorted from a reluctant people by grinding necessity." There is scarcely a clause in the document which cannot be traced back to English statutes of liberty, colonial charters, state constitutions, the Articles of Confederation, votes of Congress, or the unwritten practices that had grown up around these forms of government.

### 3. RATIFICATION OF THE CONSTITUTION

When the Constitution was sent by the Congress of the Confederation to the states for ratification, opposition was powerful and widespread.<sup>14</sup> Its framers were accused of representing the propertied interests only and of having deliberated in aristocratic secrecy behind closed doors. They were accused of having exceeded their instructions in preparing a new constitution instead of amending the Articles of Confederation. The provision that the new instrument should go into effect when ratified by nine states was especially opposed, many holding that this invited nine states to secede from the Union, since only by unanimous consent could the Articles be legally changed. Many opposed the large powers given to the President and the federal courts, and felt that their hard-earned liberty had been destroyed by the check placed on legislative supremacy. The more democratic element insisted on a bill of rights, being unwilling to trust the government to safeguard

<sup>14</sup> For the arguments against ratification see Patrick Henry's speeches in the Virginia Convention and Richard Henry Lee's *Letters from the Federal Farmer to the Republican* (1787).

their fundamental liberties. The Anti-Federalists<sup>15</sup> found it expedient to place great emphasis upon the theory of natural rights, which they claimed were in danger as they had been in 1775. Supporters of States' rights feared an absorption of state powers by the federal government, and opposed the provision that members of Congress should be paid out of the national treasury and should take an oath of allegiance to the national government.

Three members of the Convention, Randolph, Mason and Gerry, refused their signatures. They insisted upon the addition of a bill of rights, and believed that final action should be postponed until the sentiment of the people in general could be tested. Patrick Henry wrote that he could not agree with Washington's indorsement of the document. He doubted whether it were possible to work successfully two governments, distinct and separate, yet commanding the equal obedience of the same people, and denounced "these two, coördinate, interfering, unlimited powers of harassing the community" as "unexampled, unprecedented in history, the visionary projects of modern politicians."<sup>16</sup> Samuel Adams and his followers were so imbued with the spirit of liberty that they opposed any attempt at centralization of power. Richard Henry Lee<sup>17</sup> attacked the dangers of centralized power and called the new plan an "elective despotism." Benjamin Harrison, one of the signers of the Declaration of Independence, argued that "the states south of the Potomac would be little more than appendages of those north of," if Congress by a bare majority could control taxation and commerce. Men living far away from the sources of trade saw no need of a central government with wide power of taxation and commercial regulations. The Western representatives, indignant at the proposal to close the Mississippi, objected to a central government with full right to make treaties. For a generation men had listened to the enchanting oratory of liberty; they were not familiar with the arguments for government. The individualistic philosophy of the period feared authority and opposed any extension of its power.<sup>18</sup>

The delegates to the Convention were designated by the state

<sup>15</sup> Especially Gerry and Martin.

<sup>16</sup> For other gloomy forebodings of Patrick Henry, see Elliot's *Debates*, Vol. I, 47-51, 58, 156, 325-328, 436, 546, 549.

<sup>17</sup> In the *Letters from the Federal Farmer to the Republican*.

<sup>18</sup> For a collection of contemporary criticisms made by opponents of the Constitution, see P. L. Ford's *Pamphlets on the Constitution of the United States* (1888).

legislatures. In this respect the party that created the Constitution acted quite differently from the group that brought about the American Revolution, when by the use of extra-legal organizations, in which a considerable electorate took part, they had brought into being the Continental Congress. So also in the process of ratification the party of the Constitution was content to carry its will through the medium of the various state governments, in accordance with the practices and voting restrictions of these states. In the Revolutionary period there had been no test of public opinion for or against the plans of the party of revolution. The Constitution was not submitted to a general popular vote, in which case it would probably have been defeated, since its supporters, the propertied class, were far outnumbered by the disfranchised farmers and by the industrial workers in the cities. It was submitted to conventions, elected in the separate states in accordance with their restricted franchise laws. Upon the election of the delegates to these conventions the contest was waged.

The vote was not taken on the same day in the various states, consequently the campaign lacked many of the features usually associated with later national elections. Nor was there a definite party organization created on either side. The members of the Convention took an active part in the campaign. Being men of property and wealth, and being accustomed to participate in government, their intercolonial relationships were the basis for correspondence and interchange of information and of aid. Washington, whose prestige was enormous, worked untiringly for ratification. A visitor to Mount Vernon in 1788 wrote: "I never in my life saw him so keen for anything as he is for the adoption of the new Constitution." Washington admitted that the document was "not free from imperfections," but believed that "there are as few radical defects in it as could well be expected, considering the heterogeneous mass of which the Convention was composed and the diversity of interests that are to be attended to." Other leaders and groups expressed their opposition and tried to create a public opinion in opposition to ratification. This opposition was handicapped by the restricted franchise and by the lack of a widespread interest. It is estimated that only 160,000 voters, or about 5 per cent of the population, expressed an opinion on the adoption of the Constitution. A number of the states ratified with the understanding that amendments should be added. In particular, a bill of rights and a definite statement that all powers not granted to,



the national government were reserved to the states were demanded. The first ten amendments resulted from this point of view.

In this contest those favoring the adoption of the Constitution were called Federalists; those opposing it were called Anti-Federalists. These names survived to some extent in the contest for Electors, Senators, and Representatives in the first elections held under the Constitution. The men who had labored to create the Constitution wished to elect men favorable to the success of the new government. Those who opposed ratification were anxious to elect men who would watch with a jealous eye the growth of power in the new government. In this contest also the Federalists were generally successful. It should be noted that the term *Federalist*, as used in the contest over ratification to mean those who favored the adoption of the Constitution and the establishment of a strong government, meant something different from the term *Federalist* as used in the Constitutional Convention, where it suggested those who opposed a centralized, or national government, and who favored a "federal" plan that left large powers to the states.

The vote on ratification was close. Massachusetts ratified by a vote of 187 to 168; Virginia by 89 to 79;<sup>19</sup> New York by 30 to 27.<sup>20</sup> The campaign was fought with the characteristic political methods of the eighteenth century, "personal vituperation, venomous pamphlets, turgid oratory, hangings and burnings in effigy, billingsgate, bonfires, barbecues, and bad verses."<sup>21</sup> Franklin said that the United States had become a "nation of Politicians." Of the mass of ephemeral literature, only one work of lasting value has survived. In the fight for ratification in New York, Hamilton asked Madison and Jay to coöperate in a series of articles explaining the need, nature, and purpose of the new Constitution. These articles appeared in various New York papers in 1787 and 1788 over the signature of "Publius." Hamilton wrote fifty-one, emphasizing the need for a central government, the value of uniform law, and the benefits to be expected in commerce and finance. Madison wrote twenty-nine, dealing chiefly with the nature of the federal relation between state and nation, and with the relation of executive, legislative, and judicial departments to one another. Jay wrote five, explaining the function of the new gov-

<sup>19</sup> See the speech of Madison before the Virginia convention, June 16, 1788, in J. Elliot's, *Debates* (1836), III, 86.

<sup>20</sup> See the speeches of Alexander Hamilton before the convention of New York State on June 24 and 27, 1788, in his *Works*, I (Lodge, ed).

<sup>21</sup> D. S. Muzzey, *The United States of America* (1922), I, 143.



ernment in foreign affairs. These articles, published later as *The Federalist*, form the ablest exposition of the principles underlying our Constitution as they were conceived by the men who created it.<sup>22</sup>

The final ratification of the Constitution was attended by general rejoicings and by a spirit of optimism in marked contrast to the discontent of the previous decade. At last the "federal roof"<sup>23</sup> was placed upon the structure of American government. "Pageants and processions, feasting and oratory, were the order of the day. Allegory was called in to supplement sober statement. 'The good ship *Constitution*' was safe in port. 'The sloop *Anarchy*' had gone ashore on the Union rock and 'the old scow *Confederacy*, Imbecility master' had 'gone off to sea.'"<sup>24</sup> In a short time, the Constitution came to be almost an object of worship. There were various reasons for the popular reverence with which the Constitution soon came to be regarded. Clergy, lawyers, and school teachers, in sermon, ceremonial oration, and classroom, led the popular chorus of national praise. The country was recovering from a period of economic depression and the wave of commercial prosperity on which the Constitution was floated was thought by many to be the result of the new system. Washington's annual addresses to Congress show that he was keenly sensitive to the political importance of prosperity. The peace and security of the United States in contrast to the disturbances of the Napoleonic wars in Europe, and the large degree of self-government in America, in contrast to the military imperialism and revolutionary excesses in Europe, also led patriotic Americans to view their institutions with pride. Besides, the Constitution was wisely silent on many controversial points, so that both parties in America, while bitterly disputing over issues such as the assumption of state debts, the establishment of a national bank, or the widening of the suffrage, could appeal to the Constitution. In opposing Hamilton's plans his opponents did not attack the Constitution, but accused him of distorting the Constitution. Jefferson's policies were supported on the ground that he was restoring the Ark of the Covenant to its rightful place in the sanctuary of democracy. Even the South in the Civil War did not attack the Constitution but accused

<sup>22</sup> See below, Sec. 4.

<sup>23</sup> See F. Hopkinson, "The New Roof; Objections to the Plan of a Federal Government for the United States, on Genuine Principles," in *Miscellaneous Essays and Occasional Writings* (2 vols., 1792).

<sup>24</sup> D. S. Muzzey, *The United States of America* (1922), I, 144-145.

the North of depriving the South of rights to which it was entitled under the Constitution. The fact that for fifty years after adoption the public had no knowledge of how the Constitution was framed was distinctly favorable to the growth of a legend. Open covenants openly arrived at do not make for popular veneration of the covenants.

The men who had borne the burden of responsibility in the establishment of the new system, and who were to operate it, realized the difficulties still to be encountered. Washington, in his inaugural address, in a voice "a little tremulous," said: "The preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered as deeply, perhaps as finally, staked on the experiment intrusted to the hands of the American people." And the opposition to the Constitution, temporarily stilled, broke out in a new form under Washington's administration in the formation of the Democratic-Republican party under the leadership of Jefferson. In opposition to the policy of the Federalists, they accused the "Monocrats" and the "Anglo-philés," the merchants and bondholders, of abusing their power and degrading the government from the service of the whole people into slavery to the privileged and moneyed classes. Controversy shifted from the issue of creating a union to that of the power to be exercised under it and of the exact nature of the system that had been created.

#### 4. POLITICAL THEORY OF THE CONSTITUTION

The political theory of the group that secured the adoption of the American Constitution is best expressed in the Constitution itself, in *The Federalist*, and in the writings of Washington,<sup>25</sup> Hamilton,<sup>26</sup> John Adams,<sup>27</sup> and James Wilson.<sup>28</sup> The submission of the Constitution to the states for ratification or rejection gave rise to a discussion of the principles of political theory and of government, in which many of the ablest minds in the states took part.<sup>29</sup> Of all the defenses of the Constitution *The Federalist* was the ablest. It was not, however, a comprehensive and logical treatise

<sup>25</sup> *Works*, ed. by W. C. Ford (14 vols., 1889-1893).

<sup>26</sup> *Works*, ed. by J. C. Hamilton (7 vols., 1850).

<sup>27</sup> *Works*, ed. by C. F. Adams (10 vols., 1856), especially "A Defence of the Constitutions of Government of the United States" (1787-1788); and "Discourses on Davila" (1790).

<sup>28</sup> *Works*, ed. by J. D. Andrews (2 vols., 1896).

<sup>29</sup> *Pamphlets on the Constitution*, ed. by P. L. Ford (1888).

on political science, but a series of pamphlets, hastily prepared, and written for the specific purpose of persuading the popular mind to accept a particular form of government at that particular time. Its general political principles were distinctly subordinated to that purpose. Jefferson, later a bitter opponent of Hamilton, pronounced *The Federalist* the best commentary on the principles of government that had ever been written.<sup>30</sup> Kent said that he knew of no work on the principles of free government that could be compared with it, "not even if we resort to Aristotle, Cicero, Machiavelli, Montesquieu, Milton, Locke, or Burke."<sup>31</sup> H. C. Lodge says: "It marks an epoch in the development of free constitutional government, in the art of confederation and in political thought."<sup>32</sup>

*The Federalist* accepted the fundamental principles of contemporary political thought. It suggested an original state of nature in which all men possessed natural rights, and found the beginnings of government in a social contract through which men gave up certain of their natural rights to the authority thus established.<sup>33</sup> It acknowledged that the consent of the people was the basis of all legitimate authority,<sup>34</sup> and announced that government was a necessary evil, unnecessary in a perfect society, but required to restrain the passions of imperfect men.<sup>35</sup> These doctrines, so much emphasized in the theory of the Revolutionary period, were, however, not stressed in *The Federalist*. They were stated because they formed an unquestioned part of the political thought of the time, but the main arguments of *The Federalist* were but little related to these general principles. It had little to say about the rights of men, or human equality, or the dangers of tyrannical government. The Revolutionary enthusiasm for unrestrained democracy was markedly absent, and the dangers of anarchy and inefficient administration were used as the basis of argument for a vigorous and coercive authority. Roger Sherman laid down the rule that "the people should have as little to do as may be with the government." *The Federalist* sneered at "the reveries of those political doctors, whose sagacity disdains the admonitions of experimental science."<sup>36</sup> In contrast to the optimistic dreams of the French revolutionists as to what might be accomplished by the reign of philosophy, Hamilton warned against

<sup>30</sup> In his letter to Madison, Nov. 18, 1788.

<sup>31</sup> *Commentaries*, I, 241.

<sup>32</sup> *Alexander Hamilton*, 82.

<sup>33</sup> Nos. 2, 43, 50.

<sup>34</sup> No. 22.

<sup>35</sup> No. 15.

<sup>36</sup> No. 28.

the enthusiasts who "expect to see the halcyon scenes of the poetic or fabulous age realized in America."<sup>37</sup>

At many points the theory of *The Federalist* departed from the lines of revolutionary thought. It was generally accepted in the earlier period that democracy was best suited to states that were small in territorial extent. History seemed to teach that there was a direct connection between the size of a state and its form of government. Large states had always been centralized and autocratic. Only small states, such as the Greek and Italian cities and the Netherlands, had been republics. Rome, which grew increasingly imperial with her territorial expansion, was a striking example. Montesquieu, who was much quoted, had pointed out<sup>38</sup> that republics could scarcely exist unless they were small in extent and that large states were naturally autocratic. There were many in America who prized local government and who were jealous of the liberties of their states. They feared that the unification of the thirteen states and the establishment of a national government over so large an area would destroy democracy and lead to a centralized despotism. It was necessary for *The Federalist* to meet these objections.

It pointed out that in the earlier democracies all the citizens assembled in person to direct public business, but that the device of representation made possible the extension of representative democracy over a much larger area.<sup>39</sup> It argued not only that a large republic was possible but even that it had certain positive advantages. Its greater numbers gave a larger selection from which able men could be drawn,<sup>40</sup> and its diversity of interests would result in such a balance of forces as would prevent the dominance of any single faction.<sup>41</sup> Madison in particular emphasized the doctrine that the rights of the individual were best safeguarded by the existence of a wide variety of interests which could be played off one against another. The framers of the American Constitution believed in "republican" government, not in pure democracy. By a "republican" government they meant a system which derives its powers ultimately from the entire body of citizens, but which is administered through representatives chosen directly or indirectly. The framers of the Constitution had no desire to imitate the democracies of antiquity. They were held to be turbulent and con-

<sup>37</sup> No. 30.

<sup>38</sup> *De l'esprit des Lois*, Bk. VIII, 16.

<sup>39</sup> Nos. 14, 62.

<sup>40</sup> No. 10.

<sup>41</sup> No. 50.

tentious, incompatible with personal security and the rights of property, and generally short-lived and violent in their deaths. Public opinion was viewed as popular stupidity and mob clamor. It was pointed out that the distinction between earlier democracies and the new American republic lay in the total exclusion of the people in their collective capacity from any share in government in the latter. The views of the public were to be refined by "passing them through the medium of a chosen body of citizens whose wisdom may best discern the interests of their country." Such a system could safely be of large territorial extent.

The opponents of the Constitution argued that it did not respect the fundamental principle of separation of powers, and that the three functions of government were dangerously confused. *The Federalist* abandoned the doctrinaire theory of absolute separation of executive, legislative, and judicial functions which had the mutual interdependence of the various departments. The Whig been accepted in the earlier state constitutions. It held that it was impossible to define accurately the boundaries of each, and that the true policy was not an absolute separation of powers but a balance of interests that would secure the interdependence of the three classes of powers.<sup>42</sup> It supported the constitutional provisions which set up a system of checks and balances through which each department shared somewhat in the functions of the others and thus prevented any department from unduly extending its powers or encroaching on the powers of others.<sup>43</sup> It argued that "parchment barriers" stating the independence of each department were insufficient, and that the strongest barriers against concentration of power were constitutional provisions guaranteeing doctrine of checks and balances, of authority through distribution of the powers of government, was always kept in mind. In this way the various interests in the state might be played off one against another. It argued further that state and federal governments would be balanced one against the other and that this would further guarantee against governmental tyranny.

As to the respective powers of legislative and executive departments, *The Federalist* also showed a marked change from the radical political theory of the Revolutionary period. At that time the executive was associated with the royal governor and with the

<sup>42</sup> Nos. 46-50.

<sup>43</sup> W. S. Carpenter, "The Separation of Powers in the Eighteenth Century," in *American Political Science Review*, XXII, No. 1 (Feb., 1928).

British crown, and was in disrepute in America. The legislature was associated with the colonial assemblies and was given popular confidence. *The Federalist* adopted the point of view that in republics the greatest danger comes from unlimited powers in the hands of legislative bodies, partly because they control the purse, partly because it is difficult to set precise constitutional limits to their powers. Madison stated that "the legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex."<sup>44</sup> Frequent references were made to the corruption and incapacity of the state legislatures. It argued, therefore, for a bicameral system, in which the Senate could check hasty and intemperate measures, and for an energetic executive with substantial powers.<sup>45</sup> John Dickinson wished the Senate to consist of men distinguished in rank and in weight of property, and bearing "as strong a likeness to the British House of Lords as was possible." Gouverneur Morris hoped that the Senate "will show us the might of aristocracy." It was argued that the membership of Congress should be kept small, since the greater the number of legislators, the fewer would be those who actually directed proceedings.

As to the judiciary, *The Federalist* believed that it was the department least dangerous to the liberties of the people, and that it should be kept independent in its position.<sup>46</sup> This was especially necessary in a country with a written constitution, since the judiciary must act as its interpreter and must see that the laws conform to that instrument. It would thereby be able to prevent a despotic legislature from encroachment upon the rights of individuals, and from dangerous experiments with new laws. As Hamilton said: "Every institution calculated to restrain the excess of lawmaking and to keep things in the same state in which they happen to be at any given period was more likely to do good than harm."

*The Federalist* had no enthusiasm for bills of rights. It referred to them as aphorisms which would sound better in a treatise of ethics than in a constitution of government.<sup>47</sup> It argued that bills of rights were necessary in a monarchic government, as checks upon unlimited royal power, but were not needed in a government in which all power came from the people and was exercised by their representatives. It argued that liberty could not be secured

<sup>44</sup> No. 48.<sup>45</sup> Nos. 61, 62, 70.<sup>46</sup> Nos. 77-83.<sup>47</sup> Nos. 28, 47, 84.



by paper barriers, but must depend upon the spirit and temper of the people. The anarchy of the Revolutionary period made many skeptical of the emphasis on liberty; they now desired authority and law at any cost. The earlier period emphasized the rights of man and demanded more democracy; the later period emphasized the necessity of government and was less confident of unrestrained popular control. The Declaration of Independence represented the political theory of a time when it was necessary to dissolve political bonds; the Constitution represented the thought of a period when it was desirable to form a more perfect union.

As to the nature of the system created by the new Constitution, and the location of sovereignty within it, *The Federalist*<sup>48</sup> held that it was neither wholly federal nor wholly national, but a combination of the two. It was a "compound republic." The equal vote allowed to the states in the Senate was a "constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residuary sovereignty."<sup>49</sup> The doctrine of divided sovereignty prevailed in the United States until the time of Calhoun. The new government was considered to be both federal and national as to the source of its power, and federal and national in the method of its amendment. The state governments were not destroyed, but were made "constituent parts of the national sovereignty," and were left in possession of "certain exclusive and very important portions of sovereign power." They retained "all the rights of sovereignty which they before had, and which were not exclusively delegated to the United States." While expressed in a somewhat confused and contradictory way, it was argued that by the Constitution sovereignty was divided between the states and the nation.<sup>50</sup> Neither was supreme, both were limited.

Pelotiah Webster, in his pamphlet<sup>51</sup> urging a convention to frame a new Constitution, declared: "A number of sovereign states uniting into one Commonwealth and appointing a supreme power to manage the affairs of the Union, do necessarily and unavoidably part with and transfer to such supreme power so much of their own sovereignty as is necessary to render the ends of the Union

<sup>48</sup> See especially Nos. 4, 9, 20, 32, 39, 42.

<sup>49</sup> *The Federalist*, No. 62.

<sup>50</sup> See John Dickinson, *Letters of Fabius*, 179; Noah Webster, *An Examination into the Leading Principles of the Federal Constitution*, 46.

<sup>51</sup> *Dissertation on the Political Union and Constitution of the United States* (1783).

effectual." Washington, writing to the Congress of the Confederation, said: "It is impracticable in the federal government of these states, to assure all its rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into Society must give up a share of liberty to secure the rest."<sup>52</sup> In 1790 John Adams said: "Our new government is an attempt to divide a sovereignty—a fresh essay at *imperium in imperio*." The Confederation had failed in trying to combine the partial sovereignty of the Union and the complete sovereignty of the states. The new Constitution aimed to remedy this mathematical impossibility by making both partially sovereign. The acceptance of the idea of divided sovereignty was made more easy by the general belief that the real source of authority was in the "people," and that the government at best was but their agent. Whether this meant the people of the several states or the people taken collectively, *The Federalist* was careful not to answer. This question was left to later generations.

As to the ends of the state, the framers of the Constitution laid great emphasis, as did Locke, on the protection of property. Gouverneur Morris proclaimed that the protection of property was the main object of civil society. The protection of life and liberty was better organized in the pre-civil state; hence, if men abandoned the state of nature, it was for the protection of property rights. Madison combined the "security of property and public safety" as the primary objects of government. James Wilson, however, denied that the protection of property was the first object of government; he ranked higher "the cultivation and improvement of the human mind." Economic considerations played a large part in the political theory of the times. In the Revolutionary period "the great Mr. Locke" had been appealed to for the purpose of justifying resistance to taxation without representation; in the Constitution-making period, the same doctrines were used to protect the property of the creditors against the debtors, the merchants against the landowners, and the minorities against tyrannical majorities.

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## CHAPTER VI

### POLITICAL THOUGHT OF THE PERIOD OF FEDERALIST SUPREMACY

#### 1. GENERAL NATURE OF THE FEDERALIST PERIOD

For twelve years the group that had secured the adoption of the Constitution remained in control of the new government. Washington was unanimously chosen by the electors to be the first President, and the work of organizing the administrative and judicial machinery of the federal system was immediately begun. The three executive departments of State, Treasury, and War were organized in the summer of 1789, and Jefferson, Hamilton, and Knox were appointed to these offices respectively. Randolph was named Attorney-General. These heads of departments did not form a "Cabinet" in the European sense. They were not an executive committee, chosen from the legislature and responsible to it in shaping national policy, nor were they recognized as a body by Congress or the Constitution. The President, according to the Constitution, might require their opinion in writing upon any subject relating to the duties of their offices, but he was not obliged to consult them as a group. Washington frequently asked the advice of his secretaries separately, but under Jefferson the custom was fixed of assembling the Cabinet for joint deliberation on the policies of the administration. A Judiciary Act, passed September 24, 1789, organized the Supreme Court and created federal circuit and district courts. The Judiciary Act conferred upon the Supreme Court the power of reviewing the decisions of the state courts as to the constitutionality of state statutes. From this Act was derived the practice of the Supreme Court of declaring null and void acts of the state legislatures and of Congress which conflicted with the Constitution, a power which led to many controversies between the upholders of national sovereignty and the advocates of States' rights.

One of the first acts of the new government was the addition of a bill of rights to the federal Constitution. As submitted to the states, the original instrument was lacking in provisions, such as

appeared in most of the state constitutions, guaranteeing the civil liberties of the individual. This lack had been a serious obstacle to ratification. In *The Federalist*, Hamilton argued that a bill of rights was not necessary because of the limited powers granted to the national government, but the mass of opinion insisted on such provisions; and seven of the states, in ratifying, proposed amendments for the purpose. Madison was elected to the first Congress under pledge to use his influence in favor of a bill of rights, and in June, 1789, he introduced amendments, seventeen of which were voted by the House, twelve were indorsed by the Senate, and ten ratified by the states (1791). Eight of these contained the desired guarantees of personal rights, the ninth provided that the grant of certain powers to the government in the Constitution shall not be construed "to deny or disparage others retained by the people," the tenth was intended to make more clear the distribution of powers between the national and state governments.

The eleventh amendment was added in 1798. In 1793 the Supreme Court held, in the case of *Chisholm v. Georgia*,<sup>1</sup> that a citizen of one state could sue another state in the federal courts. This interpretation of the judicial power aroused the champions of States' rights, who bestirred themselves to have the sovereignty of the state made clear. The Massachusetts legislature declared the power exercised by the Supreme Court "dangerous to the peace, safety, and independence of the several states and repugnant to the first principles of a federal government." The Georgia house of representatives passed an act providing that any official who attempted the enforcement of the decision should be declared guilty of felony and suffer death without benefit of clergy by being hanged. Under such widespread dissatisfaction an amendment was adopted, which declared that "the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state."

Under the Federalists the new government modeled its behavior after the English style. A strong effort was made to develop the Senate into a sort of Privy Council to advise the President, and Hamilton assumed the position of premier among the President's ministers. Congress, however, soon asserted its independence of the executive; and, jealous of its constitutional right of initiating rev-

<sup>1</sup> 2 *Dallas*, 419.

enue measures, the House refused to allow Hamilton to appear on the floor in person to recommend his measures. Hamilton, who wished to play the part of an English Chancellor of the Exchequer, was much nettled by this democratic opposition. Fisher Ames complained that the heads of departments, instead of forming a real ministry, were merely "chief clerks." From the beginning of our history the feature which distinguishes the American constitutional system from the responsible governments of Europe was clearly established. Leading Federalists wished the President to assume a great deal of state in the administration of his office. Hamilton prepared for the President a scheme of etiquette imitating royal exclusiveness. The address to Congress, with which Washington opened the session, was couched in the style of a speech from the throne. Senators were to have direct access to the President on matters of public business, but Representatives were not given this privilege. At the first session of Congress, the Senate, under the lead of John Adams, endeavored to attach titles of royalty to the presidential office, but the lower House defeated all such proposals. The Federalists, with their aristocratic leanings, believed in form and ceremony, and this attitude was made a constant target of attack by their democratic opponents. There was a strong apprehension that the Federalist leaders desired a grand and splendid government, as close to the monarchical standard as possible. Jefferson, on his return from France in 1790, wrote that he "was astonished to find the general prevalence of monarchical sentiments" in the national capitol. The political literature of the time abounded in slurs and sneers at Washington's "Court," and popular dislike of its ceremony had much to do with strengthening the opposition to the administration.

The most difficult problems confronting the new government were those of raising revenue, and those of determining our policy in relation to the situation in Europe growing out of the French Revolution.<sup>2</sup> Immediately after the organization of Congress, Madison proposed a bill for a tariff on certain imports. While the preamble to this bill described it as an Act "for the encouragement and protection of manufactures," the main argument used by Madison in his speech was the need of revenue to meet the financial obligations of the government. He held that if industry and labor were left to take their own course they would generally be directed to those objects which were the most productive. However, he

<sup>2</sup> See below, Sec. 5.



stated some exceptions to this laissez-faire policy. Established manufactures should not be ruined; prohibition for sumptuary reasons might be allowed; and protective duties might be justified for purposes of embargo in time of war and for national defense. England's attempts to secure the monopoly of the carrying trade had so angered the Americans that the free-trade ideas of the early Revolutionary period had practically vanished, and a protective policy was boldly voiced by many in the United States. In 1787 Jefferson had extolled the virtues of a simple agricultural state, and in 1789 Madison had maintained the principle of free intercourse. But in 1793, when Federalists and Republicans began to differ on questions of foreign policy, Jefferson advocated vigorous measures of protection directed against England, and Madison brought in a set of resolutions based on this recommendation.<sup>3</sup>

Soon after Congress assembled for its second session in 1790, Hamilton presented his "First Report on the Public Credit."<sup>4</sup> Henry Cabot Lodge believed that there was "no single state paper in the history of the United States, with the exception of the Emancipation Proclamation, which was of such immense importance and produced such wide and far-reaching results" as this document. It consisted of two main parts: first, What are the obligations of the United States; second, How shall these be met? Hamilton argued that our debt of more than eleven million dollars to foreign creditors should be paid in full "according to the precise terms of the contracts relating to it." He further argued that our domestic debt, which with unpaid interest amounted to more than forty million dollars, should be paid in full at face value. The certificates representing this debt had depreciated in value during the financial chaos of the Confederation, and large quantities had been bought by speculators at one-fourth of their face value. Madison and others argued that the government should pay the present holders only what they had paid, plus interest, and that the remainder should be paid to the original holders. The *American Farmer* said: "Can it be thought reasonable or just that the assignee should now be entitled to that which the assignor honorably relinquished to the distressed state of the country?" It asserted that the funding system would make the original creditors "hewers of wood and drawers of water to a foreign moneyed in-

<sup>3</sup> See Madison's Resolutions of 1794, based on Jefferson's Report, in *Annals of Congress*, 1794, 155, 209.

<sup>4</sup> A. Hamilton, *Works* (ed. by Lodge), II, 227-289.

terest." Hamilton argued that this plan was "replete with absurd as well as inequitable consequences," that the United States was pledged to pay the full amount of the certificates to whoever held them, and that those who had so little faith in their government as to sell their certificates below par deserved their loss. Hamilton insisted that the new government could not begin with a policy of repudiation; his opponents accused him of making the Treasury the ally of the capitalists, of encouraging speculation in the public funds, and of favoring the rich who had taken advantage of the poor by buying up their certificates at low prices.<sup>5</sup> A member of the House publicly declared that "since this report has been read in this House, a spirit of havoc, speculation, and ruin has arisen, and has been cherished by people who had access to the information the report contained."

The next part of Hamilton's plan aroused even more opposition. The several states had incurred debts amounting to over eighteen million dollars during the Revolution. Hamilton proposed that the national government should assume these debts, since they had been incurred in the common cause of securing independence, and since he wished to unite the creditor class in support of the central government. He argued that the national government had taken from the states the right to levy tariffs, hence it should relieve them of the burden of their debt. If the states retained their debts, it would compel them to compete with the national government in raising large revenues, would create jealousies among the states, and would put a double burden of taxation on the people. Hamilton frankly admitted his desire to secure the support of the moneyed class to the national system. In 1780 he wrote:<sup>6</sup> "The only plan that can preserve the country is one that will make it the immediate interest of the moneyed men to coöperate with the government in its support." States with large debts naturally favored Hamilton's policy of assumption; states with small debts, especially those of the South, opposed the measure. Many Republicans argued that the amount assumed was excessively large.<sup>7</sup> It was finally adopted through a bargain with Jefferson, who secured some votes in the Southern states for assumption in return for Hamilton's influence in locating the national capitol on the Potomac. Hamilton did not fear a national debt, but said it might even

<sup>5</sup> E. S. Maclay, ed., *Journal of William Maclay* (1890).

<sup>6</sup> In a letter to Robert Morris.

<sup>7</sup> See Gallatin, *Sketch of the Finances* (1796).

become a national blessing. His adversaries charged that he wished to make it perpetual, like the debt of Great Britain.

In December, 1790, Hamilton submitted a second Report on the Public Credit,<sup>8</sup> in which he recommended an elaborate system of excise duties on wines and spirits as a means of raising additional revenue. He also believed that by collecting a tax on stills, owned chiefly by farmers, it would bring home to the people of every part of the country the power of the national government. Opposition to this tax was most marked on the frontier, where transportation was so difficult that the only way in which corn could be made profitable in trade was by its manufacture into spirits, which reduced its bulk. Indignation became widespread and intense and led finally to the armed resistance against the excise officers known as the Whiskey Insurrection (1794). At the same time Hamilton presented his famous report advocating the establishment of a National Bank.<sup>9</sup> At the opening of the Second Congress (December, 1791), he presented a Report on Manufactures,<sup>10</sup> advocating a protective tariff. In his address to Congress Washington had recommended early provision for the defense of the country and urged the "promotion of such manufactories" as would render the United States "independent of others for essential, particularly for military, supplies." Hamilton's report was the result of this recommendation, and was a strong presentation of the case for protection. It was not adopted by Congress, though duties on imports were increased in 1792 for the purpose of maintaining additional troops on the frontier. The excise policy and the provisions for a National Bank were put through Congress.

When the Bank bill was sent to Washington for his signature, he requested the members of his Cabinet to submit written opinions concerning it. Randolph, the Attorney-General, advised the President to veto it, arguing that the Constitution did not give Congress the power to create corporations. Jefferson,<sup>11</sup> jealous of the extension of the authority of the national government, urged a strict interpretation of the Constitution, and argued that the right to create a bank was not among the enumerated powers given to Congress and that a National Bank was neither "necessary" nor "proper" for carrying out the powers conferred upon Con-

<sup>8</sup> *American State Papers, Finance*, I, pp. 64-67.

<sup>9</sup> *Ibid.*, pp. 67-76.

<sup>10</sup> *Ibid.*, pp. 123-144.

<sup>11</sup> *Jefferson's Works* (ed. 1854), VII, 555-561.

gress. He said: "I consider the foundation of the Constitution as laid on this ground: 'That all powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States or to the People.' To take a single step beyond the boundaries thus specially drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition." In the debate in Congress the Bank had been attacked as a monopoly, inconsistent with a free republic, and Madison recalled that the constitutional convention of 1787 had rejected the insertion of a power to Congress to grant charters of incorporation.

Hamilton replied in an elaborate argument,<sup>12</sup> which was the first exposition of the "implied powers" of Congress. He insisted on the sovereignty of the national government and argued that a National Bank was necessary and proper for the performances of such important federal powers as the laying and collecting of taxes, the borrowing of money, the regulation of currency and trade, and the national defense. Washington finally signed the bill, on the ground that he would favor the policy of the man in whose department the matter lay. When the constitutionality of the Bank was tested later before the Supreme Court,<sup>13</sup> the reasoning of John Marshall, in upholding the legislation of Congress creating the Bank, followed closely the arguments of Hamilton. While the adoption of Hamilton's financial policies hastened the economic prosperity of the country, which was even earlier in evidence, it also widened the breach in the Cabinet and in the country at large between two irreconcilable parties, and furnished the basis for a powerful opposition to the administration. Every feature of Hamilton's plans stood for a strong national authority; in opposition grew up a party opposed to centralization.

## 2. BEGINNINGS OF POLITICAL PARTIES

Throughout the eighteenth century, political parties were regarded as undesirable and dangerous. They were viewed as factions which menaced the peace of society and led to demagogic appeals to the common people. This point of view was emphasized by Bolingbroke,<sup>14</sup> who urged a strong and just king who should break

<sup>12</sup> Hamilton's *Works* (ed. 1851), IV, 104-138.

<sup>13</sup> In 1819, in the case of *McCulloch v. Maryland*. 4 *Wheaton*, 316.

<sup>14</sup> In his *Idea of a Patriot King* (1738).

down party control and unite in the service of the state all good men. George III formed his policy on this ideal, and it influenced the attitude of the greatest statesmen of the age. The elder Pitt believed that parties should be annihilated, and consented to head a non-partisan administration. While Burke defended the party system and urged that the majority party should control the government,<sup>15</sup> his views were generally regarded as selfish and dangerous, encouraging the formation of cabal and faction. The Whigs believed in the constitutional system of checks and balances, and were opposed to concentrating the sovereignty of the nation in the hands of a controlling group. Shelburne, in refusing to organize the Cabinet on party lines, told the House of Commons that he would follow the principles of "his master in politics, the Earl of Chatham, who had always declared that this country ought not to be governed by party or faction, and that if it were to be so governed the Constitution must necessarily expire."<sup>16</sup> Not until the party system was well established by practice was it accepted in theory in England.

The Whig abhorrence of party spirit was also felt by the framers of the American system. Frequent references to the danger of factions appeared in their speeches and correspondence. As early as 1736 Franklin wrote: "Faction, if not timely suppressed, may overturn the balance, the palladium of liberty, and crush us under its ruins."<sup>17</sup> *The Federalist* refers to the "pestilential influence of party animosities," and a large part of Washington's farewell address was devoted to this topic. He stated that parties, in a monarchic government, might sometimes be necessary but that "in those of a popular character, in governments purely elective, it is a spirit not to be encouraged." He described in solemn language the "horrid enormities" which party spirit may perpetrate against the constitutional safeguards of government. Nevertheless, party spirit was always active in the colonies. English party alignments and names, Whigs and Tories, reappeared in America, and were kept alive by the contest between the governors and the assemblies in the colonies and by the dispute with the mother country before the Revolution. The Tory party was destroyed by the success of the Revolution and the Whigs were left in undisputed power, but they were also rent by factional animosities ex-

<sup>15</sup> *Thoughts on the Present Discontents* (1770).

<sup>16</sup> Lecky, *History of England*, IV, 256.

<sup>17</sup> *Works*, I, 428.

cited during the course of the struggle. During the war Washington wrote that "party disputes and personal quarrels are the great business of the day, while the momentous concerns of the country are but secondary considerations." The hostility of a Congressional cabal almost succeeded in removing him from command.

Aside from the personal jealousies and animosities of rival leaders and groups, certain broad lines of cleavage began to appear in American political life. In addition to the controversy between the Eastern and Western sections of the colonies, between the commercial and the agricultural interests, and between the debtor and creditor classes,<sup>18</sup> differences appeared, during the Confederation, between an administrative faction and a congressional faction, which served as centers of party formation. In the former the military group was prominent; in the latter, the civilian. The former desired to build up an energetic executive authority; the latter had a habitual dread of arbitrary power. The incapacity of the Congressional faction led to a strong reaction in favor of a more vigorous government, and finally to the framing of the Constitution which embodied the principles favored by the administrative and military party.

The struggle between the Federalists and the Anti-Federalists over the adoption of the Constitution could not furnish an enduring basis of party action. Anti-Federalism, being largely a policy of negation, was destitute of any principle of vitality after the Constitution was adopted, except as expressing a general attitude on the issues of the day. The terms *Federal* and *Anti-Federal* were used in several states in the first elections under the Constitution, indicating some tendency to continue the battle over ratification; but in a short time *anti-Federal* disappeared from the American political vocabulary. The natural tendency of the defeated Anti-Federalists was to recruit a party of national opposition, to make issues on questions of constitutional interpretation and governmental policy, and to oppose the extension of federal power. To this, however, there were numerous exceptions. Patrick Henry, who had opposed the Constitution and who declared that he would "seize the first moment that offered for shaking off the yoke in a constitutional way," later excused the Alien and Sedition laws and condemned the Kentucky and Virginia Resolutions. Richard Henry Lee, Luther Martin, and Samuel Chase, prominent

<sup>18</sup> See above, Chapter V, Secs. 1-2.



leaders of the opposition to the Constitution, later became ardent Federalists. On the other hand, Madison and John Dickinson, who were active in securing the adoption of the Constitution, became prominent Republicans; and Jefferson, the leader of that party, had been in sympathy with the national movement and had done valuable work in starting the new government.

Parties in the United States really started in Washington's administration and grew out of the antagonistic views on national policy held by political groups that had coöperated in securing the adoption of the Constitution. As soon as the government was sufficiently well established to relax the pressure of necessity, the old lines of cleavage reappeared. The military group, and those whose interests were associated with it, wished to make the national government strong and effective, with extensive powers. Led by Hamilton,<sup>19</sup> it leaned toward executive supremacy, and was especially interested in developing the banking, commercial, and manufacturing interests of the country. Its chief support came from the Northern and Eastern centers of population, and it wished to secure to the Atlantic states "a prevalence in the national councils," fearing the democratic attitude of "a range of new states which would soon be formed in the West." It believed in the value of form and ceremony, and was accused by its opponents of wishing to subvert democracy and to establish monarchic institutions. It had little confidence in the political capacity of the masses and disparaged popular government. In foreign policy the members of this group leaned toward England rather than France. Their commercial relations tied them to England, they admired the British form of government, and they had no sympathy with the doctrines of the French Revolution. They retained the party name of Federalist, which had designated the advocates of the adoption of the Constitution but now implied that they were supporting the administration and upholding the federal government against its enemies. They claimed to be the authors of the government, the heirs of Washington's name and power, the friends of neutrality, peace, and prosperity.

The other group, led by Jefferson, favored civil rather than military supremacy, and believed in legislative rather than execu-

<sup>19</sup> For Jefferson's opinion of Hamilton and his measures, see Jefferson's letter to Washington in *Writings* (Ford ed.), VI, 1-5; for Hamilton's opinion of Jefferson, see Hamilton's letter to Col. Carrington, in J. C. Hamilton, *History of the Republic of the United States*, IV, 524-537.

tive power. Its members desired an orderly government, but not a weighty one. They were individualistic in their point of view and believed that the best government was one that governed least. Their ideal was an agricultural community requiring a minimum of governmental apparatus. They opposed the development of manufacturing and of cities, believing that the United States should produce food and raw materials which could be sent to Europe in exchange for finished goods. As Jefferson put it: "I think our governments will remain virtuous for many centuries, as long as they are chiefly agricultural; and this they will be as long as there shall be vacant lands in any part of America. When they get piled up upon one another in large cities, as in Europe, they will become corrupt as in Europe."<sup>20</sup> This group had more confidence in the people, and favored simplicity and informality in governmental procedure. It sympathized with the theories of the French revolutionists and with the establishment of the French Republic, and wished to go to its aid in the European war. The French Revolution imbued political philosophy with social idealism and elevated the democratic ideal.<sup>21</sup> It aroused the masses to political consciousness, and brought into prominence the doctrine that sovereignty lay in the will of the majority. Paine's dictum, "That which a whole nation chooses to do, it has a right to do," opposed the Federalist doctrine of constitutional checks and minority rights.<sup>22</sup>

The Jeffersonian group drew chief support from the Southern states and from the new settlements in the Western lands. Its leaders asserted that they were the protectors of liberty, of the rights of man, of the rights of the states; that they alone practised economy, and that the Federalists were not American, but English, in sympathy and point of view. By a natural antithesis, this party took the name of Democratic-Republican,<sup>23</sup> and argued that the aim of the party was to preserve the government as it was originally intended against the efforts of the Federalists to expand national powers. What it actually did was to give a powerful impetus to

<sup>20</sup> *Writings*, IV, 480.

<sup>21</sup> See C. D. Hazen, "Contemporary American Opinion of the French Revolution," in *Johns Hopkins University Studies* (1897).

<sup>22</sup> John Quincy Adams wrote his articles signed "Publicola" in the *Columbian Centinel* of Boston, June 8 to July 27, 1791, to oppose the theory of the sovereignty of the majority will.

<sup>23</sup> The name was usually abbreviated into Democrat or Republican. The members of the party called themselves Republicans; their opponents called them Democrats, often with the adjective "wild," "vile," or "Jacobinical" prefixed.

democratic tendencies by stirring up the people against the government.

The political divisions in the United States in Washington's administration were well described in the monumental work of the English clergyman, William Winterbotham.<sup>24</sup> He wrote:

"With respect to the state of politics in America, they have among them a few suspected royalists, exclusive of some Englishmen settled in the great towns, whom the Americans regard as unreasonably prejudiced against their government, and infected with a kind of *maladie du pays*. The rest of the Americans are republicans, but of two classes: the one leaning to an extension rather than a limitation of the powers of the legislative and executive government; or, in other words, rather leaning to British than to French politics; inclining to introduce and extend the funding, the manufacturing, and the commercial systems. In this class rank almost all the executive officers of government, with the President at their head; the majority of the members of the senates, and the greatest part of the opulent merchants of the large towns: this party is denominated the Federalists, partly because they were the chief introducers and supporters of the present federal government, and the constitution of 1787; and partly from the very ingenious series of letters in favour of that constitution by Mr. Hamilton, termed 'The Federalist.' The other party are called 'Anti-federalists'; not because they are adverse to a federal government, or wish, like the French, for a republic, one and indivisible, but in contradistinction rather to the denomination of the other class. The Anti-federalists, at the same time when the present American constitution was in agitation, were hostile to the extensive powers given to government, and wished for more frequent returns to the people, of the authority they were to delegate to their trustees in office. This party objects to the salaries given to the officers of government as too large, to the state and distance assumed by some among them. Not even excluding the President, Washington, whose manners and mode of living, cold, reserved and ceremonious, *as is said*, have tended in some degree to counteract the effect of his great abilities and eminent services. The Anti-federalists also rather lean to the French theory, though not to the French practice of politics; and they are averse to what they deem the monopolizing spirit and insulting arrogance of superiority in England. This spirit of animosity against Great-Britain has been prodigiously increased by the part she is supposed to have taken in fomenting the Indian war, in exciting the hostilities of the Algerines, in seizing the ships and obstructing the commerce of the American merchants, in refusing or neglecting to give up the posts upon the lakes, or to make reparation for stolen negroes. The conduct of the British Court has certainly given strength to the Anti-federal party, among whom may now be ranked the majority of the people, and the majority of the house of representatives. It will be easy to conjecture from the preceding account, that the Federalists are the *ins*, and the Anti-federalists the *outs* of the American government."

<sup>24</sup> *An Historical, Geographical, Commercial, and Philosophical View of the American United States* (1795).

In Washington's administration, the group of Federalist leaders in the Cabinet and in Congress directed the policy of the government. In order to secure coöperation between the executive and the legislature, an administration party appeared in Congress, resulting from the activity of Hamilton as Secretary of the Treasury. In informal caucus, Hamilton and his followers in Congress planned the work of the session. Naturally an opposition developed to the active participation of the Secretary of the Treasury in the business of Congress and to the extensive powers with which he wished to entrust the national government. Madison early drew away, attributing his action to Hamilton's desire for strong government, unlike what Madison believed was the intention of the framers of the system. The chief opposition centered around Jefferson, who had always had misgivings about the possible strength of the new government, and who differed from Hamilton on many matters confronting the administration. He turned his efforts, not only to organizing a group of leaders in opposition to Hamilton's policies, but also to arousing the voters and convincing them that the personnel of the government needed changing. Clubs and societies were organized, in imitation of the democratic clubs of Robespierre, pledging themselves to "a real and genuine republicanism." They believed in the people as the foundation of authority, desired a wider suffrage, and opposed the control exercised by a small group in the new government.

The importance of publicity was recognized by the leaders of the Republican group, and they used pamphlets and the press, preferring lampoon and invective to serious argument, and deliberately exciting the passions of the people. Washington complained that Freneau's paper<sup>25</sup> was an "outrage to common decency." The Federalists held that only intelligent persons were competent to discuss public questions and that arguments should be kept on a high and dignified plane, suitable to their minds. In colonial times censorship of the press had been severe,<sup>26</sup> but the revolutionary movement gave the press great freedom. It was a convenient medium for the dissemination of colonial opinion, and many articles on political questions appeared in the press of that day. The celebrated *Farmer's Letters* of John Dickinson and the

<sup>25</sup> The *National Gazette*. See S. E. Forman, "The Political Activities of Philip Freneau," in *Johns Hopkins Univ. Studies*, Series XX, Nos. 9-10 (1902).

<sup>26</sup> See Franklin's *Autobiography* for his difficulties with the authorities for venturing opinions on public questions.

*Common Sense* of Thomas Paine were among the most influential. After the Revolution the practice continued, and the newspaper articles over the signature of "Publius," commonly known as *The Federalist Papers*, were important in securing the adoption of the Constitution. Communications on public affairs from Cato, Camillus, Decius, Senex, and Agricola frequently appeared in the press, until political comment was recognized as a regular function of the newspaper.

The Federalists desired to restore the old order and revived the traditional ideas as to the place of the press in a well-regulated government. In his Farewell Address, Washington denounced the license of the press, the irresponsible agitation of demagogues, and partisan opposition to the government in power. In an essay on government, Fisher Ames said: "The press is a new and certainly a powerful agent in human affairs. It will change societies; but it is difficult to conceive how, by rendering men indocile and presumptuous, it can change them for the better. . . . It has inspired ignorance with presumption, so that those who cannot be governed by reason are no longer awed by authority." The license of speech assumed by the press was abominable to the conservative elements; and the growth of party spirit, which by them was regarded as destructive to constitutional government, seemed to be a direct consequence of the tolerance shown to a seditious press.

Party differences were brought to a head in the administration of John Adams. The insulting action of the representatives of the French government and the support which they received from Jefferson's following placed the extremists in control of the Federalist organization, and they were successful in 1798 in passing the Alien and Sedition Acts. These acts were partisan measures, designed to strike with deadly effect at the party organization that opposed the Federalist clique and to suppress criticism of the government. To many Americans the rights of political agitation and of freedom of speech were fundamental, and Republican leaders protested vigorously. Jefferson, after a conference with Madison and Monroe, drew up the Kentucky Resolutions (1798-1799), and Madison prepared the Virginia Resolution (1798).<sup>27</sup> They declared that the Constitution was "a compact to which the states are parties," and that the states had the right to interpose their authority when the federal government attempted "a deliberate, pal-

<sup>27</sup> W. MacDonald, *Select Documents Illustrative of the History of the United States*, Nos. 21-23.



pable, and dangerous exercise of other powers not granted in that compact." They asserted the right of any state "to nullify of its own authority all assumptions of power by others, within its limits."<sup>28</sup> They argued that a compact must be kept by both parties to be valid, that the federal government had violated the compact in the Alien and Sedition laws, and that there was no redress except in state nullification. The theory of nullification put forward by Jefferson and Madison differed from that of Calhoun later in one important respect, and was infinitely less destructive. They were careful to avoid any suggestion of action by a single state. They speak always of "those sovereignties" which are to undo unconstitutional laws. Their doctrine appeared to be that there were but two parties to the "compact," the states of the one part, and the federal government of the other, and that the former in national convention should decide on the constitutionality of the latter's acts. The Republicans, in the minority in the government and unable to make headway in Congress, invoked state authority, and began the conflict of state and federal powers which constitutes so important a phase of American political thought.<sup>29</sup>

The two sets of resolutions differed as the men who wrote them differed. Jefferson's were those of a man whose purpose it was to arouse public opinion. He was not judicially minded, but was an imaginative philosopher. He believed in the compact theory of the Union and followed it to its logical conclusion. He said of these resolutions: "I think we should distinctly affirm all the important principles they contain, so as to hold to that ground in the future, and leave the matter in such a train as that we may not be committed absolutely to push as far as events will render prudent."<sup>30</sup> Madison's resolutions were drawn in a more judicial spirit. Instead of asserting the rights of the states to nullify as Jefferson had done, he was content to say that a state might "interpose," without indicating what form such interposition might take. In 1831 Madison declared that his resolutions, as well as those of Jefferson, were prepared merely for political effect, and that they were not to be taken as an exposition of constitutional doctrine.<sup>31</sup> At about the same time, as an answer to the Kentucky and Virginia Resolutions, Hamilton wrote a letter to the Speaker of the

<sup>28</sup> This sentence was struck out in the final copy of the resolutions.

<sup>29</sup> For the controversy over these Resolutions, see *Great Debates in American History*, VII, Ch. IV.

<sup>30</sup> *Writings* (Ford's ed.), VII, 288.

<sup>31</sup> G. Hunt, *Madison*, pp. 252-258.



House of Representatives, in which he advocated the cutting up of the states into small divisions for the purpose of increasing the number and power of the federal courts. He also suggested an amendment to the Constitution giving Congress the power to divide the larger states into two or more states.

The Kentucky and Virginia Resolutions were positive and public utterances of the Republican party group, and were intended for the purpose of "recalling the party to its original position of opposition to the consolidating tendencies of federalism." They were the first public manifestos of the opposition on a strictly constitutional question. They served the purpose of a modern party platform, and were powerful in arousing popular interest.<sup>82</sup> In 1798 Jefferson wrote: "It is now well understood that two political sects have arisen within the United States, the one believing that the executive is the branch of our government which most needs support, the other that, like the analogous branch in the English government, it is already too strong for the Republican part of the Constitution." The lines of cleavage within the body of public opinion gradually became clearly marked. Many sources of interest, sympathy, and prejudice led men to line up with one group or the other. Within each group were many subdivisions and differences, but need for concerted action fused these differences; and in the election of 1800 there were party organizations which presented Adams and Jefferson as rival candidates. While the parties put forward no formal programs, it was clearly understood that if Jefferson were elected he would place in power a group of leaders pledged to "democratic reforms."

### 3. BEGINNINGS OF THE SLAVERY CONTROVERSY

The slavery issue was important in American political thought from the beginning of our national history. In the colonial period slavery was universal and was upheld even by the clergy. Occasionally the practice was denounced<sup>83</sup> or efforts were made to ameliorate the conditions of slave life,<sup>84</sup> but in general the colonists saw nothing in the system to shock their moral sense. It was a

<sup>82</sup> F. M. Anderson, "Contemporary Opinion of the Virginia and Kentucky Resolutions," in *Amer. Hist. Rev.*, V, 45, 225 (1899).

<sup>83</sup> See Judge Samuel Sewall's *The Selling of Joseph* (1700), denouncing the "wicked practice."

<sup>84</sup> Rev. Morgan Godwyn, *A Supplement to the Negro's and Indian's Advocate* (1681).

firmly established principle of the time that the attachment of infidels to Christians in the relation of servant to master was beneficial to the infidel. It was not until the Revolution, with its emphasis on human rights, that anti-slavery ideas began to spread beyond a narrow circle of humanitarians. Even the Quakers, who were opposed to human bondage on principle,<sup>35</sup> employed slaves as house servants. Until the extensive cultivation of cotton opened a field of rapid development in the lower South, there was in all parts of the Union a steady progress in anti-slavery sentiment.<sup>36</sup> This was due partly to the fact that slavery was unprofitable in the Northern and middle colonies, partly to the acceptance of the revolutionary theories of the rights of man, partly to the fear of negro insurrections, and partly to the fact that the slave-markets were overstocked. The early agitation against slavery worked in two directions: one against the foreign slave trade, the other toward the extinction of slavery in America.

Efforts to abolish the slave trade began in the First Continental Congress, which forbade importation of slaves as a part of the famous "Association" of 1774. Jefferson, in the original draft of the Declaration of Independence, included among the grievances against King George a scathing indictment of his encouragement of "this execrable commerce." Out of deference to the feelings of the delegation from North Carolina and Georgia, that clause was suppressed. Until the end of the war in 1783 the slave traffic practically ceased. Meanwhile, many states passed laws against the foreign slave trade, but after the war the traffic revived in the far South. By 1798, however, all the states had forbidden further importation of negroes. The states might at any time repeal these regulations, and many desired that the new national government be given control over the slave trade. Such a proposition was made in the Constitutional Convention of 1787, but was resisted by the extreme Southern states. Fearing that these states would not ratify the Constitution if it contained the objectionable clause, the convention settled on a compromise which provided that Congress should not before 1808 prohibit the introduction to the Union of

<sup>35</sup> John Woolman's *Journal*, 99-110 (ed. by J. G. Whittier, 1871). See also Woolman's tract "Considerations on the Keeping of Negroes." Woolman attacked private property in land and the evils of great wealth, and urged the necessity of short hours and decent conditions for laborers. He was one of the first intellectual radicals in America.

<sup>36</sup> W. F. Poole, *Anti-Slavery Opinions Before the Year 1800* (1887); M. S. Locke, *Anti-Slavery in America, 1619-1808* (1901); W. E. B. Dubois, *Suppression of the Slave Trade* (1896).

such persons as any state saw fit to admit. In 1807 a law was passed by which Congress put into effect the powers granted to it, and the slave trade came to an end.

Slavery proved to be a source of dissension in the Constitutional Convention also when the apportionment of members to the House of Representatives was taken up, leading to the compromise by which three-fifths of the slaves were to be counted for the purpose of representation and for apportioning direct taxes. The ethics of slavery was warmly debated in the Constitutional Convention. Gouverneur Morris attacked slavery as a nefarious institution and a curse to the states where it existed. Mason of Virginia admitted that it discouraged industry, led the poor to despise labor, and checked white immigration. On the other hand, members from South Carolina insisted that the economic life of their state depended upon slavery. The majority agreed with Oliver Ellsworth that "the morality or wisdom of slavery are considerations belonging to the states." Although the word *slave* was not mentioned in the Constitution, the institution was recognized and was treated with considerable indulgence.

Meantime a movement against slavery itself was in progress in a large part of the Union. The Northern states one by one legislated against it, and by 1808 all the states north of the Mason-Dixon line, except Delaware, had either abolished slavery or taken steps looking toward its gradual annihilation. The Quakers, who believed it a duty to rid the country of slavery, took an active part in organizing public opinion on this question. Even in the South there was considerable anti-slavery feeling, especially in Virginia; but no practicable method of solving the question could be proposed, and the country gradually settled into a free and a slave section. "In the one was an aggressive element which proclaimed its hostility to slavery and expressed freely its opinion that it made the nation responsible for the crime of denying liberty to human beings. In the other was an increasing feeling that slavery was condemned, and that all Southerners must act together if they were not to be overridden. Out of this grew a solidifying of the sections and a sensitiveness on the slave question which, although for a time subservient to other issues, was never quite forgotten, and which eventually became the cause of secession and civil war."<sup>87</sup> The opponents of slavery were, however, successful in preventing the extension of slavery in the Northwest. The Or-

<sup>87</sup> J. S. Bassett, *The Federal System*, p. 185.

dinance of 1787 prohibited slavery in the Northwest Territory, and five free states were later admitted from this region. The region south of the Ohio was settled by slave-holders, and all attempts to have Congress declare it free territory were defeated. From the first organization of Congress, numerous petitions were presented asking for restrictions on slavery of one form or another.<sup>38</sup> The main purpose of these petitions was to crystallize anti-slavery sentiment; and bitter discussion raged in Congress over the acceptance of such petitions and the action to be taken on them.<sup>39</sup> In 1793 a law was passed by Congress providing for the return of fugitive slaves, authorizing a federal judge or a local magistrate, without a jury, to determine the question of ownership by oral testimony or by affidavits.

#### 4. POLITICAL THEORY OF THE FEDERALISTS

The political theory of the Federalists represented a reaction against the radical doctrines of the American Revolution. With the return of peace the conservative classes, who by reason of their Loyalist views, had had little voice in the earlier period, regained in a measure the influence they had lost. There was another large class who had supported the Revolutionary movement without being in sympathy with its democratic tendencies. Moreover, many who had espoused democratic doctrines during the Revolution became conservative after the war was over. In the New York convention, Mr. Smith said: "Who would have thought, ten years ago, that the very men who risked their lives and fortunes in support of republican principles, would now treat them as the fictions of fancy?"<sup>40</sup> The hard times and general discontent which followed the war also contributed to the reactionary movement, since many believed that these evils were due to an excess of democracy. Consequently, the democratic tendency which was manifest at the outbreak of the Revolution gave place in a few years to the political reaction which found expression in the Constitution. The theory of this reaction appeared in the speeches and writings of the Federalists.

<sup>38</sup> See the Memorial presented by the Pennsylvania Society for Promoting the Abolition of Slavery, signed by Franklin as President, presented to Congress Feb. 12, 1790. Parton's *Franklin*, II, 606-614.

<sup>39</sup> See the "Report on Slavery Memorials," in *House Journal*, 1st Congress, 2nd sess.

<sup>40</sup> Elliot's *Debates*, 2nd ed., II, 250.

Change from the radical tendencies of the Revolutionary period to the reactionary attitude of the Federalists was clearly illustrated in the writings of John Adams. In the earlier period he had enthusiastically supported liberal ideas.<sup>41</sup> He defended the rights of men, opposed executive authority, favored annual elections, and upheld popular government. In September, 1765, in the "Instructions" of the town of Braintree to the representatives in the General Court, Adams set forth clearly the doctrine of nullification. The Stamp Act, he said, was unconstitutional because it violated fundamental constitutional rights of the people. The course of events in America and in France had much the same effect on Adams that it had on Burke in England. Both abandoned the doctrinaire natural-rights philosophy, and turned to the historical method; and both became decidedly conservative in their point of view. In reply to criticisms of the American system by Turgot<sup>42</sup> and Condorcet,<sup>43</sup> because of its failure to concentrate all governmental powers in a single, sovereign, legislative body, as was attempted in France, Adams defended the American policy of checks and balances, advocated strong government, attacked unlimited democracy, and supported an aristocratic system.<sup>44</sup> He took upon himself the duty of bringing back the American people to sober reality, in opposition to what he considered the mischievous idealism spread by propagandists such as Paine and theorists such as Jefferson.

Adams was familiar with the writings of earlier political philosophers, especially Harrington, Milton, Sidney, Locke, Bolingbroke, and Montesquieu, and he had made a study of the actual working of republican governments in earlier states. He came to the conclusion that unchecked popular power tended to become unjust, tyrannical, and cruel. He held that the majority always disregarded the rights of the minority, and that a pure democracy was extravagant, unstable, and exposed to tumult and disorders. While he admitted that the people were the ultimate source of power, he believed that in the exercise of that power they must be checked and restrained. He did not approve of the immediate and unlimited

<sup>41</sup> See his "Thoughts on Government" (1776), in *Works*, IV.

<sup>42</sup> In a letter to the English liberal, Dr. Price. An extract from the letter appears in Adams's *Works*, IV, 278-281.

<sup>43</sup> *Quatre Lettres d'un bourgeois de New Haven à un citoyen de Virginie, sur l'inutilité de partager le pouvoir législatif entre plusieurs corps* (1788).

<sup>44</sup> In *A Defense of the Constitutions of Government of the United States of America* (1787-1788), and *Discourses on Davila* (1790).

democracy which the French favored and which Jefferson and his associates advocated in America. "Too many Frenchmen, after the example of too many Americans," he wrote, "pant after equality of persons and property. The impracticability of this God has decreed."<sup>45</sup> Adams denied that all men are created equal. "No two men are perfectly equal in person, property, or understanding, activity, and virtue."<sup>46</sup> He believed that men of wealth, birth, and education formed a natural aristocracy, and that "real merit should govern the world, and that men ought to be respected only in proportion to their talents, virtues, and services."<sup>47</sup> He was friendly toward monarchy, favored a hereditary nobility, believed in life tenure of office, and opposed popular elections and frequent changes of officials. In his opinion the "well-born" should control the affairs of government; the mass of the people could not be trusted.<sup>48</sup>

From his earliest writings<sup>49</sup> Adams held that a fundamental motive in human conduct is that "noble principle" "the love of power," or, as he later phrased it, the "thirst for distinction." The aim of wise public policy was not to crush this desire, but to encourage it and to direct it to right ends. The art of government consisted in regulating and utilizing the mighty aristocratic passion, the love of distinction. This could be done only by a system of classes or "orders" in the state, each checking the others. Simple governments were always bad. A mixed system alone was safe. The multitude needed a check to keep them in their proper bounds. The aristocrats needed a check to bind them to their proper places, the king or chief executive needed a check to prevent him from becoming too powerful.

Adams made religion the basis of his system of politics. Every political system, he held, was based on certain convictions in respect to God, nature, and man. Beneath tyranny lay the conception of deity as cruel and despotic, of nature as unfriendly and ill regulated, of man as weak and wicked; beneath free governments lay the opposite convictions of God as just and merciful, of nature as beneficent and governed by wise laws, of man as dignified and capable of progress. Adams had no sympathy with the rational-

<sup>45</sup> *Works*, IX, 564.

<sup>46</sup> *Ibid.*, VI, 285-286.

<sup>47</sup> *Ibid.*, VI, 249.

<sup>48</sup> See his controversy with Samuel Adams on this question in 1790, *Works*, VI, 411-426.

<sup>49</sup> *A Dissertation on the Canon and Feudal Law* (1765), a series of articles originally published in the *Boston Gazette*.



istic and atheistic tendencies of the French Revolution. Other essential features of sound public policy, in his opinion, were generous provision for public education, liberality toward institutions of higher learning, and fair compensation for public service.

In order to secure the necessary restraint against the dangers of popular government, Adams favored a system of checks and balances. He viewed the executive, senate, and assembly as representing the monarchic, aristocratic, and democratic classes in the state, and held that the existence of these three elements and a balance among them was essential to liberty. The British Constitution, in which he saw the proper balance of monarchy, aristocracy, and democracy, he considered the "most stupendous fabric of human invention." Adams believed that a strong executive, supported by the popular branch of the legislature, was the best check against the undue encroachment of the aristocratic class, represented in the upper house. The many checks and balances in the American federal system were viewed by him as desirable guarantees against hasty action on the part of any organ, and as restraints against excessive popular control, which he believed to be the greatest danger in America. His fundamental creed was that a state, in order to prosper, must have in its government a democratic element, an aristocratic element, and a strong executive. Each of these must be strong enough to protect its rights, but each must be checked in its attempts to encroach upon the others. In his early period he devoted his efforts to the endangered American democracy; later he championed the aristocratic interest against the encroaching demands of democracy; toward the end of his career he championed the executive against the encroachments of the aristocratic party.

While the followers of Jefferson regarded Adams as a monarchist, and the followers of Hamilton attacked him as a traitor to Federalism, his course was in reality quite consistent. His attitude throughout was based upon a certain theory of the state, to the formation of which he had given extensive study and much thought. Though Adams was attacked as an advocate of aristocratic government, he was less hostile to agrarianism than was Hamilton. Adams feared the aggressions of the rich as much as the turbulence of the poor. He did not favor unchecked government by gentlemen of property. His sympathies were rather with law-abiding farmers than with speculative capitalists. He stood between the two rival economies, arguing for a system of government that should be

neither agrarian nor capitalistic, but should maintain a balanced mean between them. This explains in part his hostility to Hamilton and his partial sympathy with Jefferson. As a result he pleased neither group.

To Adams, politics was "the divine science"<sup>50</sup> and he believed that he had worked out "the true elements of the science of government." In his earlier writings he was occupied with practical affairs, first in discussing our relations to England, then with advocating independence and union, lastly with outlining the plans for state constitutions. This was followed by a theoretical period, when Adams defended the state constitutions against the criticisms of radical writers like Price and Priestley in England, and Turgot and Condorcet in France, and against the ideas of Franklin and Thomas Paine, who favored a unicameral legislature. In this period he supported the federal Constitution in general but criticized certain features, such as the share of the Senate in executive functions and the restrictions on the President's veto power. He also had some doubts of the attempt to divide sovereignty between the states and the Union. Adams was always more interested in the state governments than in the national system. He was a Federalist in the original meaning of that term, believing that the Revolution made the states not only independent of England, but also independent of one another. The new Constitution he called a "national compact." This "attempt to divide a sovereignty" was in reality a new kind of "mixed government" providing, in a new balance of powers, a new check which Adams, in consistency, should have welcomed. Madison often referred to this value in a federal system. In his later writings Adams accepted the American system of government, and recanted somewhat from his earlier unpopular views, retaining of his former doctrines, which he had pronounced "the only scientific government, the only plan which takes into consideration all the principles in nature, and provides for all cases that occur,"<sup>51</sup> enough to save his pride.

Few men in the Convention surpassed James Wilson of Pennsylvania in depth of legal learning or in soundness of judgment on political affairs. None realized more clearly than he the nature of the problem before it, that of combining union with independence, and none possessed a more comprehensive view of the nature of a federal state. In the Convention he took active part in shaping the new system; as a member of the first Supreme Court he began

<sup>50</sup> *Works*, IV, 203.

<sup>51</sup> *Ibid.*, VI, 44.

the work of infusing into the dead body of the written document the living power of practice; and in his law lectures he made a systematic presentation of his views on the nature of the federal government.<sup>52</sup> Like Hamilton, Wilson was of foreign birth, and was to a great extent free from local prejudice and state pride. He supported ardently the idea of a national state. While Hamilton pushed the executive and legislative branches too rapidly toward the goal of nationalism, with the result that a reaction toward decentralization set in, Wilson began the process, continued by Marshall, of interpreting the Constitution through the judiciary in the broadest national sense. The theory of Wilson was far in advance of his times, but was gradually accepted by the American people. A century later President Roosevelt stated that he could find no better guide for his own political actions than the theories of James Wilson of Pennsylvania.<sup>53</sup>

Wilson believed in both nationalism and democracy. While his enemies in Pennsylvania burned "James Wilson, the Caledonian" in effigy because of his "aristocratic tendencies," in reality he was more favorable to popular control than were the majority of the Federalists. He believed that the "federal pyramid" should be raised to a considerable altitude, but for that reason he wished to give it "as broad a base as possible." No government, he held, could long exist without the confidence of the people. He desired vigor in the government, but wished that vigor to flow from the ultimate source of all authority, the people. He favored popular election of the President and of both houses of Congress. Although Wilson was a vigorous advocate of strong national government, he opposed every attempt to have the national government destroy the states. He believed that the states should remain, subordinate to national power, but independent within their own spheres. The idea of a federal state, including all the people of the component states, but not dependent upon the states, within which the states continued an independent existence, was new and complex. Wilson possessed the most comprehensive view of the nature of the new republic and the clearest conception of the future course of government in the United States. He believed that the Constitution should be so constructed that there should be neither gaps nor interferences between the limits of state and national jurisdictions; both com-

<sup>52</sup> *Works*, ed. by J. D. Andrews (2 vols., 1896).

<sup>53</sup> L. H. Alexander, "James Wilson, Patriot, and the Wilson Doctrine," in *North American Review*, CLXXXIII, No. 8 (Nov., 1906).

bined should form one uniform and comprehensive system of government and law.

Wilson was one of the earliest professors of constitutional law in the United States; and his lectures, delivered a little more than a year after the Constitution had been put into operation, were among the first attempts to make a systematic analysis of the American system, free from political advocacy or opposition. These lectures were delivered in Philadelphia, which was then the seat of government; and the opening lecture was of sufficient importance to attract the presence of Washington and a distinguished company of ladies and gentlemen from his "court," as the brilliant society which centered in the city was styled. In his political philosophy Wilson differed somewhat from the accepted views of the times. He regarded society as based upon consent, or social contract, but denied that it was an artificial creation. Like Aristotle, he viewed man as a political animal, and the state as a natural and desirable institution. It was not, as Paine had taught, a necessary evil, whose powers should be limited to a minimum, but a moral person, or corporation, created by contract, in which men could accomplish more than they could singly, and in which their liberty was not abridged but increased.<sup>54</sup> In the state, sovereignty rested in the people as a whole. When differences of opinion arose, the voice of the majority represented the sovereignty of all. This sovereignty need not be exercised directly, but might be delegated to representatives, the people always having the right to resume the powers delegated. A clear distinction was thus made between state and government. Government was the agent, delegated to perform certain functions, and the state might fashion its government as it chose and change it when it liked. Wilson rejected the conception of law; consecrated by the name of Blackstone, as a rule of action laid down by a superior. He held that law received its binding force from "the consent of those whose obedience the law requires."<sup>55</sup>

These general principles were applied by Wilson to his discussion of the American system. The American people had chosen to fashion their government by means of a written Constitution, which they could change if they wished. By means of the Constitution they had created a Federal Republic, which was neither a consolidated government that destroyed the states, nor a mere alliance of states, or confederacy. The people of the United States must be viewed in two ways, as "forming one nation, great and united; and

<sup>54</sup> *Works*, I, 253 ff.

<sup>55</sup> *Ibid.*, I, 88.

as forming, at the same time, a number of separate states, to that nation subordinate, but independent as to their interior government.”<sup>56</sup> The Constitution was not a compact among the states, but an ordinance established by the people of the whole United States. In language which foreshadowed the later arguments of Webster, Wilson insisted that the preamble of the Constitution should be taken literally when it said: “We, the people of the United States, do ordain and establish this Constitution.”

As to the respective powers of the states and the nation, Wilson held that whatever in its nature and operation extended beyond the individual state ought to be comprehended within federal jurisdiction. He suggested that the federal government possessed inherent as well as delegated powers. “Whenever an object occurs, to the direction of which no particular state is competent, the management of it must, of necessity, belong to the United States in Congress assembled.”<sup>57</sup> Any power ordinarily possessed by sovereign nations, and beyond the powers of the states, was possessed by the United States as a sovereign nation. Implied powers were clearly suggested. In the Constitutional Convention, Wilson had argued that a state could not retain its sovereignty if it became a member of a federal government.<sup>58</sup> In his opinion on the first great constitutional case presented to the Supreme court, that of *Chisholm v. Georgia*,<sup>59</sup> Wilson refuted the argument that the states were sovereign, and that to compel a state to submit to the jurisdiction of the Supreme Court was to rob it of its sovereignty. Wilson argued that, from the standpoint of general jurisprudence, the law of nations, and the Constitution, the United States formed a nation, and that while the word *sovereign* did not appear in the Constitution, it was because the people of the United States, conscious of their sovereignty, “avoided the ostentatious declaration.” “The people of the United States intended to form themselves into a nation for national purposes. As to the purpose of the Union, therefore, Georgia is not a sovereign state.” In his discussion of the powers of the various departments of government, Wilson endeavored to place the rights and powers of the federal judiciary on a plane of equality with the legislature and the executive. He unquestionably favored the power of the Supreme Court to declare

<sup>56</sup> *Works*, II, 7.

<sup>57</sup> *Ibid.*, I, 558.

<sup>58</sup> *Documentary History of the Constitution*, III, 100.

<sup>59</sup> 2 *Dallas*, 419.

a law unconstitutional. That part of his lectures<sup>60</sup> dealing with this question not only anticipated the argument of Marshall, but was so strikingly similar that it seems likely that Marshall drew largely on Wilson for his opinion.

The truth that the real character of a government is determined by that of the men who administer it, and that, even when elaborated in a written document, the actual form of a state is determined by the will of those who direct its destinies, is nowhere better illustrated than in the life of Alexander Hamilton. As he stated: "In my reasonings on the subject of government, I rely more on the interests and opinions of men than upon any speculative parchment provisions whatever. I have found that constitutions are more or less excellent as they are more or less agreeable to the natural operation of things. I am disposed not to dwell long on curious speculations, or pay much attention to modes or forms, but to adopt a system sanctioned by experience, adapt it to the real state of the country, and depend on probable reasonings for its operation and result."<sup>61</sup> Hamilton had no sympathy with the French revolutionary writers, whom he called "fanatics in political science." He owed most to Hume, from whom he drew his cynical psychology, and to Hobbes, whose absolute state he admired. In general, Hamilton subordinated political to economic theory. He disliked the Physiocrats, with their agrarian and sociological bias, but was in thorough accord with the English school with its capitalist basis growing out of the Industrial Revolution.

Hamilton had but a small part in fashioning the outward form of the American system, but he did much through *The Federalist* in securing its adoption and, as Secretary of the Treasury, he dominated all the departments of the new government, setting aside for a time the carefully devised checks and balances and starting a national tradition which was never entirely destroyed. Beyond most of his contemporaries he had clearly defined views regarding the nature of the state, government, and law. He saw the possibilities of strength and growth that stretched before the national government,<sup>62</sup> and did more than any other man to make the new Union a nation. He had a passion for orderly direction in human affairs. Mankind in the mass he considered weak; a strong government was necessary to restrain the natural disorders of

<sup>60</sup> *Works*, I, 416.

<sup>61</sup> *Hamilton's Works* (Lodge ed.), I, 428.

<sup>62</sup> *Works*, I, 423.



society. He believed that social disorder and governmental weakness were correlative terms and that liberty was possible only under strong authority. "Energy in the executive," he held, "is a leading character in the definition of good government."

At first inclined to the side of established government, Hamilton's contact with the American patriots soon committed him to the Revolutionary cause. Soon after his arrival in America, when still a mere boy, he wrote, in refutation of the arguments of the Loyalists, a series of papers<sup>63</sup> of such remarkable ability that they were generally attributed to Jay or Livingston or some other statesman of wide experience and profound learning. As early as 1780 he had discerned the deficiencies in the Articles of Confederation and the way in which these defects could be remedied. "The fundamental defect," he wrote, "is a want of power in Congress." "But the Confederation itself is defective, and requires to be altered." He argued that Congress should be given "complete sovereignty except as to that part of internal policy which relates to the rights of individuals," and reproached the Congress of the Confederation for not assuming larger powers, stating that "undefined powers are discretionary powers, limited only by the object for which they are given."<sup>64</sup> Thus early the doctrine of implied powers was suggested. Freed by his foreign birth from local attachments, which made it so difficult for many Americans to transfer their allegiance to a central authority, Hamilton devoted himself to the creation of a national sentiment among the people.

He had no sympathy with the doctrine of state sovereignty. To him, the Constitution was not a treaty, but the supreme law of the land. The new nation was not a strengthened confederation, but a "confederated republic," an "assemblage of societies, or an association of two or more states into one state." Moreover, the federal government should be the judge of its own powers; the people alone could correct it if it overstepped its bounds. Hamilton was in advance of his age in his attitude toward the generally accepted doctrine of the separation of powers. He favored the independence of the judiciary, but held that the legislative and executive departments were mutually dependent and should not act as checks upon one another to bring the action of the government to a standstill.

While the influence of Hamilton was felt mainly in govern-

<sup>63</sup> *A Full Vindication of the Measures of Congress; The Farmer Refuted* (1775).

<sup>64</sup> *Works*, III, 190-204.

mental policies rather than in his doctrines, nevertheless a definite theory of government and of governmental functions underlay the various aspects of his policies. He believed that the central government should be used, not merely to maintain the Constitution, but to promote the national interest and to consolidate the national organization. The adoption of the Constitution was merely the beginning. It must be followed by a deliberate effort to increase the national spirit. This implied an active interference with the natural course of American economic and political business, and its regulation and guidance in the national direction. It also involved an elaborate military and naval program, an interest in foreign affairs, and a policy of national imperialism and expansion. Hamilton held that provision for national defense should be measured only by the needs and resources of the nation.<sup>65</sup> The leaders must consciously promote national welfare. At the same time, Hamilton's national spirit was not of the chauvinistic type. When the treaty of 1794 agreed to submit the boundary of Maine to arbitration, and there was much clamor about "not surrendering American soil without first fighting to the last drop of our blood," Hamilton replied that "it would be a horrid and destructive principle that nations could not terminate a dispute about a parcel of territory by peaceful arbitration, but only by war."

Moreover, Hamilton believed that government should be directed by the same kind of leadership that had guided the country safely through the critical period. Hamilton had no faith in the masses. He denied that the voice of the people is the voice of God.<sup>66</sup> The people get the tone of their sentiments from their leaders, and they need guidance and control.<sup>67</sup> While Hamilton accepted the prevalent theory of social contract and natural rights,<sup>68</sup> he did not give much attention to the individual, whom he viewed only as the constituent unit of the state. The rights of the individual were inseparably connected with those of the government, and the security of the one could not be separated from that of the other.<sup>69</sup> He believed that he was fighting for social stability and political order against the dangers of anarchy and dissolution, and that it was necessary to bestow on the central government the support of a strong special interest, and to retain control in the hands of an aristocracy of ability. He was possessed by the English conception

<sup>65</sup> *The Federalist*, No. 31.

<sup>66</sup> *Works*, I, 382.

<sup>67</sup> *Ibid.*, VII, 9.

<sup>68</sup> *Ibid.*, I, 61-84.

<sup>69</sup> *Ibid.*, VIII, 138.

of a national state based on the domination of special privileged orders and interests. He wished to encourage and protect liberty as far as it was compatible with good order, but he believed that it could be protected only by an energetic and clear-sighted central government, controlled by the "wealth and intelligence of the country." Hamilton was well acquainted with the process by which English commerce had been able to extend itself over the world, and his ultimate purpose was to give American relations a tendency in the same direction.

His financial schemes also had a political side. He believed that the prosperity of its commerce should be an object of care to the state, and that to a commercial people a navy is a necessity. The independence and security of a country depends on its possession within itself of all the requisites of national supply. "The possession of these is necessary to the perfection of the body politic, to the safety as well as to the welfare of the society."<sup>70</sup> By his knowledge of English history he knew that since the days of Walpole the wealthy part of the population had exerted an influence out of all proportion to their number, and he wished to secure the support of the moneyed class in America. He also believed that a strong fiscal policy would draw the states together and break down the local jealousies which he deplored. Moreover, if many individuals held the obligations of the nation, they would sacrifice more to prevent its dissolution, and thus a national debt might be a blessing. This was an argument which for many years men had heard in England.

Hamilton's aim was to establish a government in which wealth should control and guide. He believed in the rich and the well-born, he feared the turbulence of democracy. He wished the government to reach out, under the doctrine of loose construction, for all those powers that were necessary for the existence of a nation. He bitterly opposed the doctrine of nullification put forward in the Kentucky and Virginia Resolutions, and considered them a menace to the government so serious as to justify an appeal to arms.<sup>71</sup> He opposed the separation movement of the Federalists in New England,<sup>72</sup> and stated that "if this Union were to be broken it would break my heart." Through his efforts the support of capital was secured for almost any claim the government might make to doubtful powers. Under his influence Congress began to exercise

<sup>70</sup> *Works*, III, 356.

<sup>71</sup> *Ibid.*, VIII, 517, 525.

<sup>72</sup> *Ibid.*, VIII, 615.

unenumerated powers, and a basis for such practice was found in the doctrine of "implied powers," later supported by the Supreme Court. Partly through his efforts, Congress had begun to add new states, with greater dependence of feeling upon the national government; and the people at large had begun to feel a new dignity and many material gains from a strong Union. Hamilton's genius for organization made a nation for Jefferson to Americanize and democratize.<sup>73</sup>

## 5. FOREIGN POLICY DURING THE PERIOD OF FEDERALIST SUPREMACY

Several of the most eloquent numbers of *The Federalist*<sup>74</sup> were devoted to a consideration of the proper method of conducting international relations, in contrast with the weakness in that respect under the Articles of Confederation. The Constitution made treaties a part of the supreme law of the land, but in the conduct of foreign relations it followed the theory of checks and balances in giving to each department of the government a share in the control of foreign policy. While Montesquieu and Locke, from whom the doctrine of separation of powers was derived, placed the conduct of foreign affairs in a separate department, the framers of the American Constitution did not follow this policy, but divided this function among the executive, legislative, and judicial departments.

The President was made commander-in-chief of the army and navy and was given the right to appoint, send, and receive ambassadors and other foreign agents. Congress was given power to declare war; the President and the Senate were authorized to make treaties. The carrying out of treaties was vested partly in the executive and partly in Congress. The enforcement and interpretation of treaties and admiralty jurisdiction were given to the Supreme Court, which took over the functions of the Court of Appeals of the Confederation. In practice the executive department became the organ of international communication, and a Department of Foreign Affairs, responsible to the President, was created by Congress in 1789. Shortly after, the duties of keeping the records and seal of the new government were added to this office and its name was changed to the Department of State. To this office Jefferson was appointed, and a set of ministers was sent abroad to repre-

<sup>73</sup> See Gertrude Atherton, *The Conqueror* (1902).

<sup>74</sup> *The Federalist*, Nos. 22, 63, also 11, 64, 70.

sent the United States at foreign courts. Ambassadors, the first rank of diplomatic agents, were not appointed on the theory that an ambassador represented the sovereign of a country and that the United States had done away with sovereigns.

Several important principles of foreign policy were adopted by the new American government early in Washington's administration. A controversy broke out between Spain and England, both of whom claimed the west coast of North America and were interested in the profitable fur trade. England wished to send troops from Canada across the United States to capture Louisiana, and the British minister placed the matter before Washington. Hamilton favored granting such permission, arguing that England would win and that it would be advantageous to have her under obligation, and that perhaps we might thereby secure New Orleans.<sup>75</sup> Jefferson opposed this policy and argued that, if England secured the Spanish territory in North America, we should be surrounded by a strong neighbor and should never secure the much-desired right to navigate the Mississippi.<sup>76</sup> John Adams urged that we should follow the international law of neutrality and not allow our soil to be used by either belligerent. Washington took the advice of Adams and formulated a policy of neutrality which was the American ideal for a century. He suggested, however, that if war broke out, Spain should cede New Orleans and Florida to the United States. Thus early in our history were laid down the American doctrine of neutrality in European controversies and the principle that if American territory changed hands the United States was interested in securing it for herself. Isolation in European policies and imperialism in American expansion were both foreshadowed.

The outbreak of the French Revolution soon put a more serious strain upon the American policy. At first the French Revolution was welcomed by liberals in all countries. When the Bastille fell, Lafayette sent its keys to Washington in recognition of the indebtedness which the cause of revolution owed to America. French fashions became popular in America, and civic feasts, liberty caps, and the salutation of "citizen" and "citizeness" became common on the streets. The treaty of alliance with France in 1778 provided that the United States should guarantee "from the present time and forever" the possessions of France in the West Indies. When the Napoleonic wars brought England and France into hostility,

<sup>75</sup> Hamilton's *Works*, IV, 48.

<sup>76</sup> Jefferson's *Writings* (Washington ed.), II, 100; VII, 568; IX, 412.

France viewed the alliance as a continuing affair and expected the United States to come to her aid under the treaty. At first a wave of enthusiasm for the French Revolution led many Americans to favor this policy, but as the Revolution passed into the hands of the radicals, culminating in the executing of Louis XVI, American sentiment began to divide.<sup>77</sup> The New England shipowners began to realize that a war with England would ruin the merchant marine and the commerce of the United States. They were less impressed by the French worship of abstract political ideas than they were by the hard facts of business. The rural New Englander, under the influence of a Congregationalist clergy, hated a republic which had enthroned a Goddess of Reason. Accordingly, the Federalists more and more became pro-English, while the sentiment in favor of France was strongest among the Democratic-Republicans of the South.

When Citizen Genêt, the new minister from the French Republic, landed in the southern part of the United States, and began to organize armed expeditions, fit out privateers, and set up French prize courts, it was necessary for the administration to formulate its policy. Jefferson, with his belief that the tree of liberty must from time to time be watered by the blood of patriots and tyrants, looked without flinching on the excesses of the Reign of Terror and maintained his sympathy with the fundamental purposes of the Revolution. Hamilton saw the whole structure of civilization tottering with the successes of the *sans-culottes*. Jefferson believed that we were bound by the French treaty and should give aid short of actual war. With his belief that the people are the source of all authority, and that government is merely their agent, he insisted that the treaty between the two nations remained binding, in spite of the fact that both had changed their forms of government. Hamilton argued that the treaty was made with the king of France, but that as there was now no king we were no longer bound. Washington was not impressed by Hamilton's argument, believing that a change in government did not affect treaty agreements with the state concerned, but he held that the French were waging an offensive war, while the treaty stated that it was a defensive alliance.<sup>78</sup> Accordingly, he issued a Proclamation of Neutrality

<sup>77</sup> See C. D. Hazen, *Contemporary American Opinion on the French Revolution* (1897).

<sup>78</sup> Jefferson's *Works*, IV, 17-20, 29-31; IX, 142-143; Washington's *Works* (Ford ed.) XIII, 280-290.



(1793)<sup>79</sup> stating that it was our interest and duty to remain neutral, and that Americans who aided either belligerent should not look to the United States for help. This action raised a storm of protest from the Jeffersonian faction. Hamilton, under the name of "Pacificus,"<sup>80</sup> defended the policy of the administration. Madison, under the name of "Helvidius," led the attack.<sup>81</sup> After a campaign of vilification and abuse seldom equaled in our history,<sup>82</sup> the respectable elements of the community rallied behind Washington, and the recall of Genêt was demanded.

Numerous important treaties were negotiated during the period. The United States continued to pay blackmail to the corsairs of the Barbary States. It assumed the financial obligations of the old government under the Confederation and agreed to pay the debts contracted at that time. It negotiated a settlement of the boundary dispute with Spain over West Florida. It secured from Spain the right to navigate the Mississippi to its mouth and to have for three years a "port of deposit" at New Orleans. Numerous treaties were negotiated with Indian tribes, which were then treated as sovereign states. In the negotiation of these treaties an important principle in the conduct of foreign relations was gradually established. The Constitution provided that treaties should be negotiated by the President "by and with the advice and consent of the Senate." This implied that the President should consult with the Senate during the course of negotiations; and Washington tried to make the treaty-making power work as the Constitution provided. It soon became evident that the President could not always consult the Senate before he made a treaty, and the obstructions and delay caused by the Senate during the course of negotiation made the process too tedious. In a short time the policy of consultation in advance was generally abandoned, and treaties were presented to the Senate only when final ratification was desired.

As the wars of the French Revolution developed, practically every important nation became engaged. The United States alone stood out as the great neutral. In all such struggles the element of sea power has been a prime consideration.<sup>83</sup> The European coun-

<sup>79</sup> *American State Papers: Foreign Relations*, I, 140.

<sup>80</sup> In a series of seven papers published in the *Gazette of the United States*.

<sup>81</sup> Hamilton's *Works* (ed. 1851), VII, 76-117; Madison's *Writings* (ed. 1865), I, 611-654.

<sup>82</sup> Especially by Freneau in the *National Gazette*, and by Bache, in the *Advertiser*.

<sup>83</sup> See A. T. Mahan, *Influence of Sea Power upon the French Revolution and Empire* (1898).

tries were consuming food and munitions faster than they could produce them, hence they wished to buy what they lacked in America, or have America carry it for them. The shippers of the United States, mainly in New England, made their fortunes by selling to Europe what she could not manufacture or grow. The efforts of the belligerents to stop this trade, to expand the contraband lists, to revive the "Rule of 1756,"<sup>84</sup> and to stop and overhaul American ships and "impress" American seamen, created difficulties between the United States and both sides in the war. As England controlled the sea, she was in a position to do greater damage to American shipping; and after vain protests, Congress proposed that the unpaid pre-Revolutionary debts should be applied to compensate Americans who had suffered from British depredations. This was not adopted, but the proposal to place an embargo on all American shipping for two months was adopted with such suicidal effect on American commerce that it was soon abandoned.

While the Jeffersonian party clamored for war with England, the Federalists, representing the New England shipping interests, were determined that there should be no war. They influenced Washington in 1794 to send John Jay to England in an attempt to settle outstanding disagreements without recourse to arms. He asserted the fundamental principles of American foreign policy, that the United States preferred to arbitrate differences rather than fight over them, that the United States had the right to remain neutral in a European war, that a neutral should be allowed to use the seas for peaceful commerce even in time of war, and that belligerents should do as little harm as possible to private persons and property. Jay succeeded in negotiating a treaty which secured a partial recognition of these principles. England agreed to evacuate the Western fur-trading posts, and to settle the northern boundary disputes. The United States promised to pay her debts and England promised to compensate American merchants for illegal seizures. But England refused to give up her right to obstruct neutral commerce, would not yield on the Rule of 1756, and made no agreement as to impressments. Moreover, the contraband list was enlarged rather than diminished. Jay's treaty was reviled by both parties in the United States. The Federalists felt that the shipping

<sup>84</sup> That a neutral has no right to deliver a belligerent from the pressure of his enemy's hostilities by trading with his colonies in time of war in a way that was forbidden in time of peace.

interests had not been properly cared for; the Jeffersonians were enraged because the cotton interests were not protected and because no provision was made for payment for the slaves that had been carried off by the British in 1783. The debtor Southern states also opposed the agreement to pay Britain anything. Hamilton, in a powerful series of papers published anonymously, defended the treaty. He warned his fellow citizens that "the horrid principles of Jacobinism" were spreading in America and that a war with England would place control of affairs in the hands of men who held such ideas. The treaty was ratified, although Congress debated long over making the appropriations necessary to carry it out.<sup>85</sup>

Meanwhile, American ships were being held up in French ports while the rapidly changing governments were busy with revolution, and great damage was done to our commerce by French privateers. Monroe, who was sent as minister to France, had no sympathy with the Federalist policies. He believed that we should make common cause with France, and expected that Jefferson would defeat John Adams in the election of 1796 and that the United States would then go to war with England. His correspondence with the enemies of Washington at home was more confidential than that with the President himself, and he was recalled for disloyalty to the administration in power. The French, who were misled by Monroe, and who were angered by the settlement with England through the Jay treaty and the failure of the Americans to continue the alliance of 1778, snubbed his successor, threatened him with arrest, and finally suggested that they could deal with the Americans only if they bribed the French foreign office.<sup>86</sup> Angered at these indignities, American public opinion supported President Adams in refusing further negotiations,<sup>87</sup> and to the great delight of the Federalists, actual hostilities broke out between the American and French navies. Great plans were under way, furthered by the imperialist policies of Hamilton, to use this opportunity to expand American territory. The United States army, the British navy, and the discontent of the Spanish-American colonies were to be used to oust the Continental countries from the new world. The Federalists advocated a stern attitude toward France;

<sup>85</sup> See speech of Fisher Ames favoring the treaty and that of Albert Gallatin opposing it in A. Johnston, *American Orations* (1927), I, 84-130.

<sup>86</sup> See the *X.Y.Z. Letters*, in *Univ. of Pennsylvania Translations and Reprints*, VI.

<sup>87</sup> Two new patriotic songs, "Hail Columbia" and "Adams and Liberty," became highly popular.

the Republicans were the pacifists of the day.<sup>88</sup> However, the French, under Napoleon, were soon ready to reach an agreement, and in 1800 a treaty was signed in which the French released the Americans from the obligation of giving assistance under the treaty of 1778 in return for the giving up by the United States of the claims of its citizens for damage done by France to their commerce. The "French Spoliation Claims," which our citizens thereafter expected Congress to pay, remained an issue for over a century. Adams believed that his settlement with France was his best public service, and long afterwards said that he desired no other epitaph than this: "Here lies John Adams, who took upon himself the responsibility of peace with France in 1800."<sup>89</sup>

For a short period (1802-1803) Europe was at peace, and it seemed as if the policy of the Federalists had been successful, though at considerable cost, in maintaining American neutrality. With the coming into power of the Jeffersonian party in 1801 a new era opened in American politics, and with the renewal of the Napoleonic wars in 1803 the United States drifted into a useless war. Not until the close of that contest could the United States actually put into practice its policy of isolation. As early as 1782 John Adams had written: "America has been long enough involved in the wars of Europe. She has been a football between contending nations from the beginning, and it is easy to foresee that France and England both will endeavor to involve us in their future wars. It is our interest and duty to avoid them as much as possible, and to be completely independent, and to have nothing to do with either of them, but in commerce." With our unhappy experience in early diplomacy, it was no wonder that Washington, in his Farewell Address, advised the Americans that "Europe has a set of primary interests, which to us have none, or a very remote relation," and that "it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities." Washington did not object to temporary alliances for special emergencies. Nor did Washington intend that the United States should refrain permanently from the exercise of its influence in the community of nations. He stated specifically that the predominant motive in his neutrality policy was to give the United

<sup>88</sup> For discussion of this issue in Congress, see *Great Debates in American History*, II, Ch. III.

<sup>89</sup> *Works*, X, 113.

States time to mature its new institutions and to grow to that degree of strength which would give it the command of its own fortunes. Like Hamilton, Washington advised the Americans to extend their *commercial* relations with foreign countries, but to have as little *political* connection with them as possible. The increasing connection between business and politics made this advice difficult to follow.

## 6. DOWNFALL OF THE FEDERALISTS

The election of 1800 was, except for the election of Lincoln in 1860, the most important in American history. It was the first party revolution, the culmination of a ten years' struggle of the agricultural class, the small traders, and the artisans, under the leadership of Jefferson, against the monopoly of public office and the control of national policy by the aristocratic supporters of Washington, Adams, and Hamilton.<sup>90</sup> The causes for the success of the Republican group and for the defeat and rapid disappearance of the Federal party were numerous. Reverence for Washington kept political passions from bursting into flame as long as he was chief executive, although, as Fisher Ames said, "they glowed beneath the surface like a burning coal pit." As early as 1791 Jefferson had written<sup>91</sup> that "there is a vast mass of discontent gathered in the South, and when and how it will break God knows." Each of Hamilton's measures in his policy of national centralization, and every policy of the government in the diplomatic contest with England and France intensified the hostility between the Federalists and the Republicans, the "Anglomen" and the "Jacobins" as their opponents termed them.

When the farmers of western Pennsylvania in 1794 broke into open revolt against the federal excise tax on their whiskey, Washington sent troops against them, and blamed the uprising on the "self-created societies" of Democrats which were being encouraged by Jefferson and his pamphleteers. In turn, the Republicans attacked the policy of the government in dealing with the Whiskey Rebellion. They viewed the excise as an "infernal tax" imposed on the farmers for the benefit of the capitalists. They asserted that a local riot had been magnified into a rebellion in order to allow Hamilton to parade his "janissaries." They argued that democracy

<sup>90</sup> See E. S. Maclay, ed., *The Journal of William Maclay* (1890).

<sup>91</sup> In a letter to Richard Henry Lee.

itself was a "self-created society" and that the people had the right to create voluntary associations and to criticize the acts of the government that they had created. Jefferson accused Washington of "an attack on our fundamental liberties," and reminded him of the "self-created societies" that had brought about the American Revolution. Jay's treaty furnished additional political ammunition for the Republicans. Jefferson called it an "alliance between England and the Anglomen of this country against the legislature and the people of the United States." The Republicans opposed the neutrality policy of the administration and referred to Washington as the "monocrat" who, through subservience to England, had alienated France, our best friend.

With the election of John Adams in 1796, the opposition became more active and direct. His pompous and ungracious manner and his open scorn of the political capacity of the people made him a constant object of attack.<sup>92</sup> Political passions broke loose in a storm of abuse from both sides. In addition, dissension arose within the ranks of the Federalists themselves. Hamilton, though no longer in office, wished to be the power behind the throne, and intrigued with the members of the Cabinet in opposition to the President. Hamilton disliked Adams personally because of his Puritan attitude and his pretentious manner. He knew that Adams did not favor his financial and commercial policies, and that Adams opposed his imperialistic plans and his interest in an extensive military program. Washington's relations with Adams were marked by formality and reserve, and Adams wrote that he detested "that contracted principle of monarchy and exclusion" that prevailed through Washington's administration. Adams belonged to the old congressional group and was disliked by the administrative and military faction that was in power under Washington. The split between Hamilton and Adams divided the Federalists at the time when the opposition of the Republicans was making rapid headway.

In passing the Alien and Sedition Acts, the extreme wing of the Federalists<sup>93</sup> dug the grave of the party. The policy involved in these acts was violently condemned by the Republicans.<sup>94</sup> In Congress, Livingston stated that "they would have disgraced the

<sup>92</sup> Among the Republican writers attacking Adams were T. Callender (*The Prospect Before Us* [1799]), and W. Duane, editor of the *Aurora*.

<sup>93</sup> Hamilton and John Marshall opposed the acts. Hamilton wrote: "Let us not establish tyranny; energy is a very different thing from violence."

<sup>94</sup> For debates in Congress on the Alien and Sedition Acts, see *Great Debates in American History*, VII, Chs. II-III.



age of Gothic barbarity," and Gallatin insisted on the English tradition of freedom of speech, stating that "error can be successfully opposed by truth with argument as the weapon." Jefferson appealed to the states in the Kentucky and Virginia Resolutions, largely for the purpose of arousing Republican sentiment throughout the nation. Their principles were widely disseminated and led to a large amount of discussion and of writing on the nature of the federal Union. The Federalist, W. Cobbett,<sup>95</sup> urging a stronger national system, attacked the "jingling and chaotic confusion of federal and state governments." The Republican, John Taylor of Caroline,<sup>96</sup> argued that the states would soon be reduced to mere provinces in a consolidated empire unless they had the right to judge when the Constitution was violated by Act of Congress, and that they would soon become merely "speculative commonwealths to be read for amusement, like Harrington's *Oceana* or More's *Utopia*."

The growing expenses of the national government, and the heavy taxes levied to meet the military preparations considered necessary because of the situation in Europe also met much resistance. Monroe accused the administration of "preparing for a war which does not exist, and expending millions which will have no other effect than bringing war upon us." The temporary truce in the European situation, which came at the time of the election of 1800, robbed the Federalists of the warlike front behind which they had found it profitable to hide in their policy of strong government and heavy taxation, and contributed to the success of the Republicans, with their emphasis on a frugal and non-military government.

The campaign was bitterly fought, with slander and vituperation on both sides. The Federalists predicted dire results if the Republicans were successful, and pointed to the French Revolution as an example of the lengths to which democratic mob rule would go.<sup>97</sup> The country would be turned over to the mercies of a Jaco-

<sup>95</sup> Cobbett's pen name was Peter Porcupine. He was an Englishman, temporarily residing in the United States, who wrote with much asperity against the Democratic-Republicans and their measures.

<sup>96</sup> Caroline County, Virginia. Taylor was the most penetrating critic of the Hamiltonian policies. See his *Examination of the Late Proceedings in Congress Respecting the Official Conduct of the Secretary of the Treasury* (1793); *An Inquiry into the Principles and Tendencies of Certain Public Measures* (1794); *An Inquiry into the Principles and Policy of the Government of the United States* (1814). Taylor was "the philosopher and statesman of agrarianism," and based his politics on the Physiocratic economy.

<sup>97</sup> See V. L. Parrington, *The Connecticut Wits* (1926).

binical mob and every sacred and stable institution would be overturned. "The government's obligations would be repudiated, and all honest citizens would be involved in 'one common, certain, and not far distant ruin.' The restraints of civilization would be cast off and 'every decent man would have to go about armed to defend his property, his wife, and his children from his Jacobin neighbor.' The Reverend Timothy Dwight,<sup>98</sup> president of Yale College, prophesied that in the event of Jefferson's election 'the Bible would be cast into a bonfire, our holy worship changed into a dance of Jacobin phrensy, our wives and daughters dishonored, and our sons converted into the disciples of Voltaire and the dragoons of Marat.' The Republican warnings, if less ludicrous, were no less earnest. The triumph of the Federalists, they said, would mean the disappearance of the last guarantee of democratic government; the state would be absorbed into a tyrannical oligarchy at Washington, in disgraceful vassalage to Great Britain. A titled nobility and a hereditary monarchy would be the eventual outcome.'" <sup>99</sup>

The election of Jefferson brought to an end the control of the Federalists over the executive and legislative branches of the government. Over the judiciary, beyond the reach of popular elections, they retained their control, and under the leadership of John Marshall the process of strengthening the national authority continued for a generation. In offering the Chief Justiceship to Jay, Adams wrote: "In the future administration of our country the firmest security we can have against the effects of visionary schemes or fluctuating theories will be in a solid judiciary." The triumph of Jefferson was the climax of a policy of political education in democracy which was largely the work of his leadership. It was viewed by the Republicans as a return to the original principles of the American Revolution, which had been subverted by the Federalists. "Now the Revolution of 1776 is complete," printed the *Aurora* on the day after election. The political factions, despised by the Federalists as "unprincipled, disorderly, ambitious, disaffected, morose men," actually came into power. As the Federalists put it, party spirit had trampled over constitutional government. So powerful was the Republican reaction to the class rule of the "men of information and property" that Washington wrote in despair: "Let that party set up a broomstick, and call it a true

<sup>98</sup> See his *The Conquest of Canaan* (1785); *The Triumph of Infidelity* (1788); *Greenfield Hill* (1794).

<sup>99</sup> D. S. Muzzey, *The United States of America*, I, 198 f.

son of liberty—a democrat—give it any other epithet that will meet their purpose, and it will command their votes *in toto*.”<sup>100</sup> This was made possible largely by the widening of the suffrage and by the popularization of politics. Addresses and discussions of political questions multiplied and the people became more conscious of their political privileges and obligations. Most of the states abolished religious qualifications for voting and office-holding during the Federalist régime, and a beginning was made in the lowering of property qualifications.

Some of the issues that divided Federalists from Republicans, such as their attitude in foreign policy, soon disappeared from American political thought. The close of the Napoleonic wars and the adoption of the policy of isolation in world affairs made our relation to France and England relatively unimportant. Other differences were fundamental and remained for a long time matters of controversy. Such were the relations of the states to the nation and the question of aristocratic *versus* democratic control of government. On these two points each party at first had a strong issue and a weak one. In their belief in a strong and vigorous national authority the Federalists were in line with the process of American development. The course of events gradually compelled the acceptance of that point of view. The growth of population and territory, the increase of interstate interests, the federal control of the Western lands, the coming of immigrants from other countries, the admission of new states that had no tradition of state sovereignty, and many other causes strengthened the spirit of unity and weakened the importance of the states.

But the Federalists, after they lost control of the government, foolishly abandoned their doctrine of national supremacy, and in the Hartford convention (1815) they seized the usual weapon of the minority and urged a restriction of the powers of the national government and state nullification in words essentially similar to the Kentucky and Virginia Resolutions of their opponents. In its report, the convention stated: “Our nation may be great, our union durable. But should this prospect be utterly hopeless, the time will not have been lost which shall have ripened a general sentiment of more mighty efforts to rescue from ruin, at least some portion of our beloved country.”<sup>101</sup> Many Federalist leaders felt that the Hartford convention should have adopted even more “effectual measures” of opposition to the War. The Hartford Convention

<sup>100</sup> *Writings* (Ford's ed.), XIV, 191.      <sup>101</sup> *Niles's Register*, VII, 305-313.

represented the commercial interests of the country, and felt that the economic balance of the Union was threatened by a combination of Western farmers and Southern planters. Josiah Quincy, a Federalist leader, resisted the admission of Louisiana in 1811 as a violation of the "compact" between the states such as would justify secession and revolution. He stated that if the bill passed, "the bonds of this union are virtually dissolved; that the states which compose it are free from their moral obligations, and that as it will be the right of all, so it will be the duty of some to prepare, definitely, for a separation; amicably, if they can, violently, if they must."<sup>102</sup> On questions of constitutionality, he declared that "the people of each of the associated states are competent not only to discuss but to decide." The Federalists also attacked as unconstitutional the Non-Importation and Embargo Acts in 1807 and 1809.

The Republicans, in power, were forced by necessity to expand the authority of the national government, and soon abandoned their opposition to it. The farmers were willing to stretch the Constitution in order to secure the agricultural lands of the Louisiana territory; and Jefferson abandoned his strict construction of the letter of the Constitution, stating that "the good sense of our country will correct the evil of construction when it shall produce evil effects." A Southern paper<sup>103</sup> declared that "no state or set of states has a right to withdraw itself from this union of its own accord." The Federalists thus gave up their strong issue and took over the weak issue of their opponents. Their party could not remove the public conviction that its little group of leaders had been secretly plotting treason and disunion.

The original strong issue of the Republicans was their confidence in the people and their belief in democratic government. American development went steadily in that direction. The control of the gentry over the government broke down with the opening up of the Western lands. As long as the pressure of the French and Indians upon the English settlements confined the field, the prestige of the gentry survived; but with the expulsion of the European powers and the driving back of the Indians, a profound change in social institutions followed. The new lands were practically limitless in extent and coercive social arrangements were impracticable.

<sup>102</sup> *Speech on the passage of the Bill to enable the People of the Territory of Orleans to form a Constitution and State Government* (1811) 4.

<sup>103</sup> *The Richmond Enquirer*.

Actual conditions favored democratic concessions. In 1802 Fisher Ames wrote to Rufus King: "We need, as all nations do, the compression on the outside of our circle of a formidable neighbor, whose presence shall at all times excite stronger fears than demagogues can inspire the people with towards their government." The removal of this pressure opened the way. Desire to obtain settlers caused inducements which early took the form of offers of political franchises, and the restrictions on the suffrage upon which the framers of the Constitution had depended soon began to loosen. Hamilton lamented the growing indifference of the better class of people to the exercise of their suffrage, and as they increasingly kept aloof from politics, the title "politician" came to carry with it social opprobrium rather than prestige. The growth of industry, with its concentration of a laboring class in the cities, also furthered democratic development, and created a new class in sympathy with the demands of the frontiersman for a wider suffrage and a more popular control of government. The principles of democracy made steady progress and the Republicans were wise enough to cling to this valuable issue.

Federalism was the product of an order of ideas transmitted from the colonial period, fast becoming obsolete. The Federalists viewed the democratic tendencies of the times with alarm. Washington was made unhappy in his retirement by fears for his country.<sup>104</sup> Hamilton, toward the end of his career, wrote that he had done all he could to strengthen the American Constitution, that he had been doubtful of its fate from the beginning, and that he was still "laboring to prop up the frail and worthless fabric."<sup>105</sup> Both Hamilton and Rufus King apprehended a "bloody anarchy" as a consequence of the leveling tendencies of the times. Fisher Ames, the oracle of the Tie-Wig School of Boston, derived a grim pleasure from the contemplation of the democratic follies and anarchy to which the country was hastening.<sup>106</sup> The Federalists were never reconciled to the Jeffersonian thesis of government. The *Columbian Centinel* of Boston published on March 4, 1801, an epitaph on the death of the "Federal Administration," aged twelve years, stating that "its death was occasioned by the secret arts and open violence of foreign and domestic demagogues." With both strong issues in the hands of the Republicans and both weak ones in the hands of the Federalists, the rapid disappearance of

<sup>104</sup> John Adams, *Works*, X, 16.

<sup>105</sup> *Works*, VII, 591.

<sup>106</sup> *Works* (1809).

the latter party was inevitable. Marshall said that Jefferson killed the Federalist party by adopting its principles.

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## CHAPTER VII

### POLITICAL THOUGHT OF THE PERIOD OF REPUBLICAN SUPREMACY

#### 1. GENERAL NATURE OF THE REPUBLICAN PERIOD

From 1801 to 1825 the Republican party under Jefferson, Madison, and Monroe, the "Virginia dynasty," controlled the executive and legislative branches of the government; the Federalists under Marshall dominated the Supreme Court. After their opposition to the War of 1812 and their threats of nullification in the Hartford convention, the Federalist party practically disappeared, and Monroe was reëlected in 1820 with only one vote cast against him in the electoral college. This was the "Era of Good Feeling," when party lines seemed to have disappeared among the people at large, although political intrigue and bad feeling were rife among the politicians. It was a time when the forces that were to control the destiny of the country were taking form, but had not yet taken a shape sufficiently definite to attract the allegiance of the politicians to the extent of forming new parties. The election of John Quincy Adams by the House in 1824 marked the beginning of a new cleavage, and the election of Jackson in 1828 marked the triumph of the new forces of unrest in political and social life, and the formation of the Democratic party.

In general it was a period of rapid industrial development and of national growth, during which many important lines of constitutional development and of foreign policy were laid down. From a states' sovereignty party in 1801 the Republican party had become a strong national party in 1816. In Jefferson's first message to Congress he urged a decrease in all the elements of power in the hands of the central government and a careful maintenance of the rights and powers of the states. Madison, in his message of 1815, recommended the increase and better organization of the army and navy, the founding of military academies, the protection of manufactures, the construction of roads and canals, and the establishment of a national university. By the end of the Republican period in 1828, sectional differences and issues had come into prominence,

a particularistic reaction had set in, and the doctrine of States' rights had been strongly revived.

With the accession of Jefferson, important changes were made in the department of the administration. Instead of driving with coach and six to the inaugural, he walked. A written message was substituted for the "speech from the throne" to Congress at the opening of the session, Jefferson giving as his reason that it would avoid contention in Congress over the character of the address in reply to the President. An effort was also made to introduce an easy and informal style of manner at the executive mansion, the "principle of *pêle-mêle*" as Jefferson called it. In general, the Jeffersonian triumph restored the supremacy of the civilian group. They reduced the army and navy, and rid themselves as rapidly as possible of the burden of national defense. They also repealed the obnoxious internal revenue laws and rescinded the legislation by which the Federalists had packed the federal bench, but retained the funding system and the national bank, Jefferson even suggesting "a judicious distribution of favors" to it and to other banks "to engage the individuals who belonged to them in support" of his administration.

To the Federalists the election of Jefferson meant a complete change in the government which they had labored to establish. He was to them a dangerous liberal in thought, religion, and government. New England preachers accused him of spreading the "atheistical, anarchical, and in other respects immoral principles of the French Revolution." Jefferson, however, took pains to reassure his fellow citizens. In his inaugural address<sup>1</sup> he said: "We have called by different names brethren of the same principle. We are all republicans, we are all federalists." He was determined to show the Federalists that there would be no violent change in the administration; he hoped thus to detach a part of their number so as to build up a Republican party in the Northern states. He made Madison, who in 1789 was as much inclined to Federalism as to Republicanism, his Secretary of State, and he shortly appointed as Secretary of the Treasury, Gallatin, whose financial principles and policies were, except for his emphasis on economy, similar to those of Hamilton. Instead of taking steps to increase the power of the states, Jefferson announced in his inaugural address, and supported in practice, "the preservation of the general government in its whole constitutional vigor as the sheet anchor of our peace

<sup>1</sup> A. Johnston, *American Orations* (1927), I, 155-161.

at home and safety abroad." Hamilton correctly estimated the new President as more revolutionary in theory than in action.

Once in authority, the Republicans had no reluctance about making a large use of the powers of government which had come into their hands. Their fear of strong government disappeared when the government was safely in their control. The Louisiana purchase was effected by an assumption of authority quite in Hamilton's style, though Jefferson suggested a constitutional amendment to legalize his act. The embargo on American commerce carried national authority far beyond anything that the Federalists had attempted; and the Enforcement Act to sustain the embargo was an enormous interference with the liberties of citizens. The doctrine of state sovereignty was soon abandoned by the Republicans and steady progress was made toward nationalization. When the Republicans were taunted that they were turning Federalists, they replied that, with Republicans at the head of affairs, things could be allowed that would be dangerous with Federalists in control. Madison in 1823 wrote: "It is true that, under a great change of foreign circumstances, and with a doubled population and more than doubled resources, the Republican party has been reconciled to certain measures and arrangements, which may be as proper now as they were premature and suspicious when urged by the champions of Federalism." Calhoun later admitted that Jefferson did not live up to the principles he had enunciated, saying he did "nothing towards maintaining the rights of the states, as parties to the constitutional compact, to judge in the last resort as to the extent of their delegated powers, . . . nothing towards reversing the order of General Hamilton which united the government with the banks; and nothing effectual towards restricting the money power to objects specifically enumerated and delegated by the Constitution." <sup>2</sup>

Political democracy and the abolition of special privilege were the great aims of Jefferson. The retention of large rights and powers by the states and a vigorous local government were the means by which at first he expected to accomplish his purpose. But when the national government was democratized, and when it was seen that the national government could be used to promote popular interests under democratic leaders, it was inevitable that national powers should increase at the expense of the states. Jefferson promoted this movement, urged by forces within his own

<sup>2</sup> Calhoun's *Works* (1833), I, 360.

party. Under his leadership the small farmers and middle-class tradesmen of the North, who were interested in democracy, but not in States' rights, were brought into alliance with the aristocratic planters of the South, the true States' rights Republicans. When the cause of national democracy came in conflict with the reserved powers of the states, Jefferson's exercise of national powers for the promotion of popular interests proved that his national democracy was stronger than his States' rights republicanism.

While the theory of the Republicans was democratic and they appealed to the people for support of their policies, their political practice was almost as aristocratic as that of their predecessors. Jefferson had stated in the Declaration of Independence that "all men are created equal," and his followers had attacked bitterly the aristocratic doctrines of John Adams; nevertheless, the Republican leaders also believed in a natural aristocracy and believed that this group should govern. They held that government should rest upon the consent of the people, but that the people should choose to office the men best fitted by training and experience to rule, and that such men should use their power for the benefit of all. In the Federalist period political power was vested in a mercantile aristocracy built on English models; in the Republican period it shifted to a landed aristocracy acclimated to the American environment. "Jeffersonian Democracy did not imply any abandonment of the property, and particularly the landed, qualifications on the suffrage or office-holding; it did not involve any fundamental alterations in the national Constitution which the Federalists had designed as a foil to the leveling propensities of the masses; it did not propose any new devices for a more immediate and direct control of the voters over the instrumentalities of government."<sup>3</sup> At the beginning of the Republican period, manhood suffrage had been established in Kentucky and Vermont, and a general movement toward the removal of restrictions on the suffrage had begun, but in most states the voters were a limited class of adult males. Political leaders set up candidates in their party interest, and patronage was used for party ends in much the same way as in England. The conduct of politics was far removed from the people and was largely an affair of personal management. Even nominations for the office of President were made by a little group of leaders in the Cabinet and in Congress. Nevertheless, the democratic tendencies of the times were marked, and the exigencies of

<sup>3</sup> C. A. Beard, *Economic Origins of Jeffersonian Democracy* (1915), 467.

politics compelled the close dynasty of Virginia Presidents, in spite of their aristocratic traditions, to further the movement. In their effort to strengthen and perpetuate their own rule, they were compelled to advocate extension of the suffrage; and competition between parties for popular support became destructive of the property qualifications for voting and office-holding, which earlier excluded the propertyless class from participation in public affairs.

At first, Washington had attempted to form a non-partisan administration, and had retained Jefferson in the Cabinet in spite of his open opposition to the policies of the Federalists. In the latter part of his administration, however, only Federalists were appointed to office. In a letter to the Secretary of War, Washington wrote: "I shall not, while I have the honor of administering the government, bring a man into any office of consequence knowingly whose political tenets are adverse to the measures the general government are pursuing; for this, in my opinion, would be a sort of political suicide." Under Adams the Federalist leaders were more outspoken. Senator Bayard stated "that the politics of the office-seeker would be the great object of the President's attention, and an invincible objection if different from his own." When Jefferson became President he found the offices in the possession of the Federalists, and the problem of bringing in his party friends was difficult. There was a general feeling that a man had a property right in the retention of his office. Nevertheless, Jefferson felt that by his election he represented the majority party in the country, and that his followers should share in the control of the government. In reply to public remonstrance over the removal of a Federalist, he wrote: "Is it political intolerance to claim a proportionate share in the direction of public affairs? If a due participation of office is a matter of right, how are vacancies to be obtained? Those by death are few, by resignation none. Can any other mode than that of removal be proposed?"

Nevertheless, Jefferson made few removals. As long as the gentry retained their class control of government, the tenure of office was little disturbed on party grounds. The new impetus toward a more democratic organization of the party and the formation of a partisan machine came from the states. In the South, where the characteristics of colonial politics longest survived, the social connections of the gentry provided sufficient organization for political purposes. Political activity was a function of social position, sought for its honor, power and social eminence. The conception of office as a payment for

partisan servility or because of its pecuniary rewards was revolting to Southerners. As late as 1849 Calhoun boasted of South Carolina that "party organization, party discipline, party proscription, and their offspring, the spoils system, have been unknown to that state." In the North, however, party divisions from the beginning drew into the field of political activity an electorate in whose opinion offices were rewards to be distributed. The growth of cities created an electorate which had no respect for social superiors and which could be appealed to in other ways. The most effective was by the distribution of patronage.

This fact was realized in New York by Aaron Burr, whose political ambitions were thwarted by Hamilton's supremacy; and his instrument was the Columbian Order, later known as Tammany Hall.<sup>4</sup> Originally a social institution, it became a center of political activity as a meeting place of the common people, occupying the place of the club of the upper classes. By the aid of Tammany Hall in 1800, Burr was successful in securing the control of New York City. This election utilized such modern methods as seeking out the voters and bringing them to the polls, in carriages if necessary; and Tammany Hall was open for entertainment all day. Hamilton was much impressed by the success of the new methods and stated that the Federalists had "erred in relying so much on the rectitude and utility of their measures as to have neglected the cultivation of popular favor by fair and justifiable expedients." The organization of political societies and clubs broke down the family politics of the old state factions; federal patronage acted as a stimulus to democratic tendencies; and popular activities in politics started a process of change which profoundly affected political conditions. During the latter part of the Republican period the federal patronage was actively employed against enemies of the administration, and in the Northern and Western states the new method of party concentration made rapid progress. The transfer of these methods to the national government was only a matter of time, and came with the Jacksonian era.

The growth of national parties compelled a constitutional amendment as to the method of choosing the Vice-President. The original provision, prepared without taking into account the rise of parties and their effect on the framework of government, provided that the electors in each state should cast their ballot for two persons, without designating which should be President or

<sup>4</sup>G. Myers, *History of Tammany Hall* (2nd ed., 1917).



Vice-President, and that the one who received the largest number of votes, provided it was a majority of the total electoral vote, should be President. In case no candidate received a majority or in case of a tie vote, the House of Representatives, voting by states, should choose the President. The election of 1800 resulted in a tie vote of the electors between Jefferson and Burr. The latter, willing to defeat what he knew to be the real wishes of his party, sought to gain the election in the House by appealing to Federalist votes. The intrigue which accompanied this design revealed the necessity of requiring the electors to designate the persons for whom they cast their ballots as President and Vice-President separately. An amendment to this effect was introduced in the House in February, 1802. In its favor it was urged<sup>5</sup> that the votes of the electors should be an expression of public will, and that any provision that led to the election of a person not intended by a majority of the electors was contrary to the first principles of the American system. Moreover, a continued delay and division in the House was a serious calamity. Against the amendment it was urged<sup>6</sup> that the small states had a better chance under the existing system, since it threw contested elections into the House where all states had an equal vote, and that it was desirable to retain the original plan of having two conspicuous men chosen without discrimination for the highest office. The proposal received the requisite majority in Congress, was ratified by the states, and went into effect as the Twelfth Amendment in 1804.

There was great diversity of practice in choosing presidential electors in the various states. In some they were appointed by the legislature, in others they were elected by districts, in others they were elected on a general ticket. In actual practice, the functions of the Electoral College in selecting the President were taken over by a Congressional caucus controlled by the administration. The dominant group of Southern statesmen passed along the Presidency from Jefferson to Madison and from Madison to Monroe. All attempts to secure a democratic or uniform method of choosing electors failed until the Jacksonian era. Popular dissatisfaction with this system was, however, widespread; and from 1813 to 1822 a proposal for a constitutional amendment was debated in Congress, providing that all electors should be chosen by popular vote in districts. With the election of Jackson the subserviency of the elec-

<sup>5</sup> *Annals of Congress*, 8th Congress, 1st sess., pp. 490 ff.

<sup>6</sup> *Ibid.*, pp. 691 ff.

toral machinery to popular control was finally established. During his administration repeated efforts were made to secure a constitutional amendment providing for the direct election of the President by the people. While these attempts, though continued for a number of years, failed, the end sought was partly attained through party activity and the establishment of national nominating conventions. The Electoral College was divested of its original functions, without any change in the letter of the law. Instead of possessing discretionary powers, it became a mechanical device for recording the popular vote for the nominees chosen by the party conventions. This change is a striking evidence of the ability of public opinion to modify the written Constitution without formal amendment.

## 2. POLITICAL THEORY OF THE REPUBLICANS

While the policy of the Republican party after it came into power showed no marked break with the lines of national development laid down by the Federalists, its political theory, especially in the earlier period, was decidedly different. Many of its leaders had opposed the ratification of the Constitution, and when the new government was put into operation its assumption of extensive powers antagonized many and led to a decided movement away from strong government and toward individual and States' rights. In addition to this natural reaction after the violent agitation for a strong government, a powerful stimulus was given to democratic sentiment in America by the French Revolution. While the democratic ideas of the American Revolution were almost wholly English in origin, those of the Republicans showed many traces of French influence. Jefferson, in particular, through his contacts in France, was much affected by the doctrines of Montesquieu, Rousseau, the French Physiocrats,<sup>7</sup> the Encyclopedists,<sup>8</sup> and the moderate leaders of the French Revolution. Thomas Paine, whose *Common Sense* had been influential during the American Revolution, wrote his *Rights of Man*<sup>9</sup> at a critical period in the French cataclysm, and

<sup>7</sup> On the Physiocrats, see Higgs, *The Physiocrats* (1897), and Gide and Rist, *History of Economic Doctrines* (1913), Bk. I, Chs. I-II.

<sup>8</sup> On the Encyclopedists, see E. J. Lowell, *Eve of the French Revolution* (1892), Chs. XVI-XVII.

<sup>9</sup> *Writings*, ed. by M. Conway, II. Paine's *Rights of Man* was written in reply to Burke's *Reflections on the French Revolution*. In reply to Paine, John Quincy Adams, under the name of "Publicola," wrote a pamphlet much after the style of his father.

this work was also widely read in America. In America, the political theory of the Republicans was best represented in the writings of Joel Barlow,<sup>10</sup> H. St. George Tucker,<sup>11</sup> John Taylor,<sup>12</sup> Thomas Jefferson,<sup>13</sup> James Madison,<sup>14</sup> and James Monroe.<sup>15</sup> They opposed every tendency toward aristocracy or centralized government.

The central figure in the early democratic movement in America was Thomas Jefferson. He came into prominence as the author of the Declaration of Independence, was the unquestioned leader of the Republican party, and furnished the political doctrines which were widely accepted during his life and canonized after his death. His theories were not combined in any single treatise, but were stated in numerous pamphlets and official documents and in a voluminous correspondence with friends in America and in France.<sup>16</sup> His influence was exerted mainly on the spirit of the people and on their attitude toward their institutions, and less on the institutions themselves. His fundamental political principles were trust in the people and antipathy to strong government. These principles were somewhat contradictory, since the growth of democracy, with its confidence in the capacity of the masses, led the people to demand a constant extension of governmental activities. Jefferson's demand that government should be government for the people was converted into a demand of government by the people. His fear that government might deprive them of their liberty was replaced by a determination to make government serve and promote their interests. Hamilton believed in a strong government in the hands of a few; James Wilson favored a strong government resting on a broad basis of popular consent; Jefferson de-

<sup>10</sup> *Advice to the Privileged Orders in the Several States of Europe* (1792); *Joel Barlow to His Fellow Citizens in the United States of America* (1801). See C. B. Todd, *Life and Letters of Joel Barlow*.

<sup>11</sup> *Commentaries on Blackstone* (1803).

<sup>12</sup> *An Inquiry into the Principles and Policy of the Government of the United States* (1814); *Construction Construed and the Constitution Vindicated* (1820); *Tyranny Unmasked* (1822); *New Views of the Constitution* (1823).

<sup>13</sup> *Writings*, ed. by P. L. Ford (10 vols., 1892-1899).

<sup>14</sup> *Writings*, ed. by G. Hunt (9 vols., 1900-1910).

<sup>15</sup> *Writings*, ed. by S. M. Hamilton (7 vols., 1898-1903).

<sup>16</sup> The nearest approach to a systematic discussion of his political theory is found in his *Summary View* (1774) and his *Notes on Virginia* (1782). His writings appear in *Writings* (ed. by P. L. Ford, 10 vols.); *Writings* (ed. by H. A. Washington, 9 vols.); and "The Jefferson Papers," in Massachusetts Historical Society, *Collections*, 7th series, Vol. I, ed. by J. F. Jameson. Later references to Jefferson's *Writings* are to the Ford edition, unless the Washington edition is specified.

sired as little government as possible, but believed in popular control over such government.

Jefferson was by nature a radical and a reformer. In his own state he attacked the aristocratic system of entail and primogeniture and opposed the established church; he drew up an elaborate plan for a public-school system, and prepared a civil and criminal code in which the severe penalties of the older law were abolished; he opposed slavery and prepared a visionary scheme of negro colonization. Many of his ideas and plans, in advance of the times, were gradually adopted. His abiding faith in the great mass of the people, and in the possibility of national progress,<sup>17</sup> was the secret of his success as a great political leader, since it placed him in sympathy with the rising tide of popular desire and with the tendency of the times. Jefferson's ideas were not original. He admitted that he did not aim "to find out new principles or arguments never before thought of," but that his doctrines were intended to be "an expression of the American mind." They followed a line of thought already marked out during the English revolution by Sidney and Locke, whom Jefferson recommended when asked for advice on political literature. For the Greek philosophers, Jefferson had a low opinion. He referred to Plato's writings as worthless "jargon."<sup>18</sup> He had little admiration for Montesquieu, because of his praise of the English system of government. Paine's *Rights of Man* he valued highly. His residence in France during the years when the storm of revolution was brewing and breaking exerted an important influence on his ideas. He had been a leader in the revolutionary movement in America and had proclaimed the equality of mankind. He sympathized with the efforts of the French people, and they "recognized him as one of themselves, a speculative thinker concerning the rights of mankind, a preacher of extreme doctrines of political freedom, a deviser of theories of government, a propounder of vague but imposing generalizations, a condemner of the fetters of practicability—in a word, by the slang of that day, a 'philosopher'; and they liked him accordingly."<sup>19</sup> Jefferson's ideas show the impress of French influence, especially in his preference of agriculture to commerce,<sup>20</sup> in his belief in the value of periodic

<sup>17</sup> His belief in human "improvability" was drawn largely from Condorcet's *Esquisse d'un tableau historique des progrès de l'esprit humain* (1795). An American edition published in 1796 was widely read.

<sup>18</sup> *Writings* (Washington ed.), IX, 462.

<sup>19</sup> J. T. Morse, Jr., *Thomas Jefferson* (1895), p. 77.

<sup>20</sup> This was a fundamental tenet of the French Physiocrats.

revolutions,<sup>21</sup> and in his interpretation of the theory of social contract.<sup>22</sup>

Jefferson accepted the prevalent belief in a state of nature, human equality, natural rights, government based upon contract, popular sovereignty, and the right of revolution. He held that in creating the compact by which civil society was formed, men did not give up any of their natural rights, but that they thereby rendered them secure. It was the duty of the state to enforce the natural rights of its citizens, but not to take any of them away. The state should limit its activity to preventing any one from encroaching upon the rights of others, and to judging in case of dispute. Jefferson was a firm believer in the policy of laissez-faire. He shared Rousseau's romantic view of the state of nature, and was inclined to believe that the first state of man, without government, was most desirable, if the society were not too large.<sup>23</sup> He believed that the Indians, who lived without government, were happier than those who lived under the European monarchs.

Moreover, the social contract should be an actual and historical basis for the state, and not merely a philosophical justification for authority. The members of the state should give their actual consent, and the principle of the contract should be sacredly preserved in the life of the people. To accomplish this, Jefferson proposed two methods: revolution and periodical renewal of the agreement. Jefferson did not view government as something sacred and above criticism. He conceived of the government, not as a power outside of and above the people, but as the people itself acting in its political capacity. This necessitated the greatest possible diffusion of power among a progressively educated body of citizens, so that the evils arising in a democracy might be purified through the filter of public opinion. A jealous watch on their rulers was the only guarantee of freedom. Instead of abandoning "the detestable practice of electioneering" and "venerating the men of their former choice," as the Federalists preached, Jefferson wished to arouse the people to "an universal attention to the duty of election." Jefferson did not share in the growing worship of the Constitution. He did not "look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be

<sup>21</sup> Compare Condorcet's doctrine that no generation can bind its successor, and Paine's belief in the necessity of periodical renewal of popular consent.

<sup>22</sup> Which was markedly similar in some respects to that of Rousseau.

<sup>23</sup> *Writings*, IV, 362.

touched.”<sup>24</sup> He believed that if the government failed to serve its proper purpose it should be overthrown, by revolution if necessary. He argued that rebellion is a medicine necessary to the health of government, and that republics should not be too severe in their treatment of rebellions, lest the free spirit of the people be crushed. It was better for the people to take up arms for their rights than to submit tamely to oppression. “God forbid,” he said, in speaking of Shays’s Rebellion, “that we should ever be twenty years without such a rebellion.” He believed that it was necessary that “the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.”

While revolution kept alive the free spirit of the people, nevertheless it acted through illegal channels, and was best suited to countries with a tyrannical government. In republics, Jefferson believed that it was possible to organize the government so as to make legal provision for periodical renewal of the contract. This could be done by holding frequent constitutional conventions for the purpose of reconsidering the organic law of the state and submitting proposals for change to the people. In this way the consent of the people to the government under which they lived could be actually given. He estimated that an interval of nineteen years was the proper period for which a constitution or law might be considered the will of the community, and that no society could make any rule or contract binding for a longer time. At the end of that period there should be an opportunity for revision. Jefferson believed that each generation should live under its own laws, and that as conditions changed, governmental institutions should be changed, and the consent of the governed be given anew. He opposed Madison’s doctrine<sup>25</sup> that the living owe a debt to the dead and give a “tacit consent” to the system founded by their ancestors. He believed that the living and not the dead should rule, and supported the principle that laws made by the legislature, rather than the Constitution, as interpreted by the Supreme Court, should be the final authority. The idea of a “frequent recurrence to fundamental principles” was often expressed.

Jefferson viewed monarchy and the principle of hereditary rule with an abhorrence almost equal to that of Paine. He declared that “no race of kings has ever presented above one man of common sense in twenty generations.” His favorite mode of attack

<sup>24</sup> *Writings*, X, 42.

<sup>25</sup> Madison, *Writings*, I, 503-506.



upon his opponents was to accuse them of being monarchists. While Jefferson was generally regarded as the champion of human equality, because of his famous "all men are created equal," he was not a believer in the absolute equality of all men. He attacked bitterly the doctrine of John Adams<sup>26</sup> that the people are divided into "gentlemen" and "simple men," and that the former should rule. Jefferson believed in a "natural aristocracy," but believed that it should be based upon virtue and talent, not upon birth and wealth. He believed "that form of government is the best which provides the most effectively for a pure selection of these natural *aristoi* into the offices of government";<sup>27</sup> but he believed that these natural rulers should be chosen by popular election, through the free choice of an intelligent citizen body.

Jefferson laid great stress on the principle of majority rule. He defined a republic as "a government by the citizens in mass, acting directly and personally, according to rules established by the majority."<sup>28</sup> Again he wrote: "Absolute acquiescence in the rule of the majority, the vital principle of republics from which there is no appeal but to force."<sup>29</sup> He believed that in affairs within their reach and competence the citizens should act in person, in others, through representatives chosen and removable by them. In his first inaugural address he laid down the principles which he believed should obtain in a democracy. These included: equal and exact justice; jealous care of the right of election by the people; the rule of the majority; the preservation of the guaranties of civil liberty—such as freedom of religion, freedom of the press, habeas corpus, and trial by jury; the subordination of the military to the civil authority; and economical administration.<sup>30</sup> He believed that democratic government must depend upon the "two hooks" of public education and local self-government. If government rests upon public opinion, that opinion must be intelligent and informed. He once said that he preferred newspapers without government to government without newspapers. He favored local government because of his dislike of centralized authority and of strong government. Strong and vigorous local authorities would

<sup>26</sup> See the correspondence between Jefferson and Adams on the question of aristocracy.

<sup>27</sup> *Writings*, IX, 425.

<sup>28</sup> *Ibid.*, X, 28.

<sup>29</sup> *Ibid.*, VIII, 4.

<sup>30</sup> See the satire on Jefferson's economy policy in Washington Irving's *Knickerbocker's History of New York* (1809), I, 196-266.

give the people an opportunity to take part in person and would serve as checks on the despotic tendencies of a strong central authority.

As an intellectual theorist, Jefferson had no sympathy with the conservatism of the lawyers or with the doctrine of judicial checks on the popular will. He had no veneration for the ancient common law of England, believing that it should be purged of outgrown elements and imbued with democratic sympathies. "Blackstone and Hume," he wrote, "have made Tories of all England, and are making Tories of those young Americans whose native feelings of independence do not place them above wily sophistries."<sup>31</sup> In his later years, his fear of judicial encroachment grew acute and his writings display an outspoken hatred of the federal judiciary. As he saw Chief Justice Marshall nullifying popular will by judicial interpretation, he wrote: "The great object of my fear is the federal judiciary."<sup>32</sup> "It is a very dangerous doctrine to consider the judges as the ultimate arbiters of all constitutional questions. It is one which would place us under the despotism of an oligarchy."<sup>33</sup>

Jefferson associated a large standing army with monarchical power, and feared that it might become an instrument of oppression. Its cost was also contrary to his policy of governmental economy. He held that, in a free state, authority should rest upon public confidence and consent, not upon force; and that a well-trained militia was sufficient for defense. In general, Jefferson believed in the self-governing capacity of the mass of the people; and had a strong suspicion of government, especially if controlled by the few. He had confidence in the soundness of popular judgment and was hopeful of the future of democratic institutions. He believed that economic conditions in America favored democracy because the ownership of property, especially in land, was widespread. He was convinced that the failure to establish democracy in the European revolutions was due to the ignorance and turbulence of the mobs in the cities, and hoped that America would remain agricultural in order that it might remain soundly democratic. He believed that immigration should be restricted to stocks that could easily be assimilated, and that overpopulation should be avoided. Jefferson did not inquire deeply into the nature of the state or its forms of organization. His great work was to crystal-

<sup>31</sup> *Writings*, VI, 335.

<sup>32</sup> *Ibid.*, X, 189.

<sup>33</sup> *Ibid.*, X, 160.

lize the growing democratic sentiment, to interpret popular feelings, and to give vivid statement to ideas that were rapidly becoming powerful. His ideas were in many respects in advance of his political practices, especially after his party came into power, but they gave a decided stimulus to the realization of democratic principles a generation later.

Next to Jefferson, Madison was the most influential leader of the Republican group, though in the earlier period he had strong Federalist' leanings. He was early convinced of the necessity of a strong Union, and was influential in determining the form of the American Constitution and in securing its adoption. When the work of bringing into operation the new national forces began, Madison appeared as a leader of the opposition to the Federalists in Congress, and as a bitter opponent of Hamilton and his measures toward strong national government. While he favored a federal system rather than a loose confederation of sovereign states, he followed the lead of Jefferson rather than of Hamilton on questions of constitutional interpretation, and upheld the doctrine of strict construction of the powers conferred upon the central government. This attitude seemed to his old friends a desertion of the cause of Federalism. It was due, partly to his friendship for Jefferson, but largely to his belief that the real issue was between the North and the South, between commerce and agriculture, between free and slave states; and Madison followed Virginia and the South.

Madison made a careful study of confederacies, both ancient and modern, and believed that the foundation of the American Confederation had been laid in error. He argued that the states should not be represented equally, that a national government should exercise authority directly upon individuals, and that the national government should have authority to enforce its laws. But he did not desire a consolidation of the states that would destroy their individuality. Unlike James Wilson, he never had a clear conception of a new state created by the Constitution and composed of the individuals of all the states. For him the national government was always a compound form, partly national, partly federal. "In its foundation it is federal, not national; in the sources from which the ordinary powers of government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and finally, in the authoritative mode of introducing amendments,

it is neither wholly federal nor wholly national.”<sup>34</sup> The states as sovereignties were more important to him than to Wilson or Hamilton. The financial policies of the Federalists and their attempts to secure a maximum of strength for the national government seemed to him to threaten the extinction of the states and to attack the basis of the federal system. As part author of the Virginia Resolutions of 1798, Madison attacked the acts of the Federalists as unconstitutional, and stated a doctrine perilously close to nullification. His explanation, made in 1829,<sup>35</sup> of what he meant in those resolutions gives the best statement of his mature conception of the nature of the Union.

Madison accepted the view, common to all philosophers of his age, that the state was the result of a contract among the individuals who composed it. By this compact, as Rousseau had stated, the consent of all was replaced by the consent of the majority, and from it came all power in a free government. The Constitution of the United States, Madison held to be at one and the same time both the original social contract that formed the basis of civil society, and the governmental contract by which a particular political machinery was set up. This contract was made by the people as embodied in the states. “The real parties to the constitutional compact of the United States are the states—that is, the people thereof respectively in their sovereign character, and they alone.” Madison denied that a single state could release itself at will from the contract, or that the parties to the contract were the states in their organized sovereign capacity, or that the Union was a league, or the Constitution a treaty. To him the Constitution was a “compact among the states in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the states individually.” He believed that in extreme cases only, and after all efforts at redress under the Constitution had failed, the states might interpose in their sovereign capacity. He argued this, however, as a right of revolution, rather than as a constitutional right of legal nullification. For him such action was the “*ultima ratio*,” and he admitted it as an ultra-constitutional right. While Madison argued that there was no inconsistency between this view and his attitude in 1798, the majority of his countrymen in the earlier period understood his views quite differently.

<sup>34</sup> *The Federalist*, No. 39.

<sup>35</sup> *Letters and Other Writings* (1865), Vol. IV.

Madison's active participation in practical politics prevented him from following visionary ideals, and compelled him to absorb many of the principles of the Federalists. As Secretary of State, Madison assisted in the negotiations that led to the purchase of Louisiana, though he shared Jefferson's scruples as to the constitutionality of the acquisition, and as to the conferring of citizenship upon its inhabitants by treaty. As President, he was forced by the War of 1812 to increase the army and navy, expand taxation and the public debt, and extend the powers of the national government in a way which a decade earlier he considered fatal to liberty. While Madison's attitude toward the growing national spirit was negative, nevertheless his administration left the country more conscious of its greatness and its unlimited possibilities, and more powerful in its united national spirit than ever before.

With the increase of national spirit in the North, and with the drift of the South toward a theory of strict construction far narrower than that of the Republicans, Madison's attempt to hold a middle position became impossible and satisfied neither party. From the days of the Constitutional Convention to his death, Madison believed in the doctrine of divided sovereignty. Supreme power, he held, was divided between the states in their united and in their individual capacities. He found it inconceivable that a confederated republic could be established unless sovereignty were divided. The new doctrine of Calhoun that sovereignty was indivisible and must lie in the Union or in the states, he considered subversive of the whole American system of government. "If sovereignty cannot be thus divided, the political system of the United States is a chimera, mocking the vain pretensions of human wisdom." This doctrine, useful in the days of the creation of the Union, could no longer solve the difficulties of the middle period of our history.

One of the ablest intellectual leaders of the young Republicans in their attack on the economics of Federalism was John Taylor of Virginia.<sup>86</sup> Like Jefferson, he was an agrarian, influenced by the Physiocratic economy. He was interested in the sources of political action and in the objects of political parties, rather than in abstract legal and constitutional questions. He believed that economic conditions determine the form of the political state and that the

<sup>86</sup> See his *Inquiry into the Principles and Policy of the Government of the United States* (1814); *New Views of the Constitution of the United States* (1823).

dominant propertied class holds sovereign power. He attacked bitterly the natural aristocracy theory of John Adams and the capitalist aristocracy theory of Hamilton. He held that all aristocracies were based on social theft and were parasites that exploited the people. He believed that America must choose between agrarianism and capitalism, and that the former was the only safe course. The destruction of all special privileges, such as those created by Hamilton's tariff, bank, and fiscal system, was necessary to safeguard American democracy. Taylor's books were a source from which the later Jacksonian movement drew arguments in its attack on the National Bank, and from which the apostles of secession could derive support.<sup>37</sup>

### 3. CONSTITUTIONAL INTERPRETATION BY THE SUPREME COURT

One of the most important developments in American political thought was the growth of the theory of judicial supremacy, by which the Supreme Court became the guardian and interpreter of the Constitution, with authority to declare invalid all laws, national or state, in conflict therewith. This doctrine was based upon the principles that the written Constitution is fundamental and superior to common and statutory law; that the legislatures exercise delegated powers, limited by the Constitution; and that the judiciary is the special guardian of the written document and must refuse to enforce enactments in conflict with it. These ideas were drawn from various sources. In the American colonies, during the eighteenth century, the belief in a law of nature and natural rights was generally held. This natural law was fundamental and unalterable. In a Virginia case, George Mason argued that "the laws of nature are the laws of God, whose authority can be superseded by no power on earth."<sup>38</sup> A Connecticut court said that "the fundamental law which God and nature have given to the people cannot be infringed."<sup>39</sup> In opposition to Blackstone, who argued that no authority could prevent Parliament from enacting laws contrary thereto, James Wilson, in his law lectures, maintained that "Parliament may, unquestionably, be controlled by natural or revealed law, proceeding from divine authority."<sup>40</sup> The early

<sup>37</sup> W. E. Dodd, "John Taylor, Prophet of Secession," in *Branch Historical Papers* (1908), II.

<sup>38</sup> Jefferson's *Virginia Reports*, p. 114.

<sup>39</sup> *Selected Essays in Anglo-American Legal History* (1907), I, 376.

<sup>40</sup> *Works*, I, 415.



Americans were deeply impressed with the idea that "natural laws were the only true law and that all legislation was binding only when it was an expression of this natural law. This doctrine was at its zenith when the American Constitution and bill of rights were adopted.

This point of view was given a further stimulus by the doctrines of Coke<sup>41</sup> and the legal leaders of the parliamentary party during the Civil War period in England, that there was a fundamental body of law, superior to King or Parliament, and that of this law the judges were the guardians. This supremacy of the common law was widely accepted in the American states. The idea of a written constitution, as a fundamental law, superior to ordinary legislation and unchangeable by it, had also been worked out in the writings of certain European publicists, notably by Vattel,<sup>42</sup> whose work was widely read and frequently referred to during colonial and Revolutionary days. There was also colonial precedent for the idea of an appeal to a higher authority from the enactments of a legislature. The crown asserted the right to hear appeals from colonial courts, and the Privy Council possessed the power to annul acts of the colonial legislatures that were contrary to the law of England. In a few cases, even the colonial courts refused to enforce laws that they considered repugnant to the charters or to the law of England.<sup>43</sup>

The speeches and writings of James Otis stated the conception of a fundamental, higher law which it was the duty of judges to safeguard. In his speech in opposition to general search warrants he stated that "an act against the Constitution is void." In his writings he asserted that the powers of a legislature are limited,<sup>44</sup> and that in all free states the constitution is fixed and the legislature derives its power from it and cannot overleap its bounds.<sup>45</sup> Otis quoted freely from Vattel and referred to the opinions of Coke, and did much to popularize the notion of a fundamental law. By 1775 these ideas had taken such a firm hold on the minds of lawyers and judges that in numerous cases the courts of the American states, during the period of the Revolution and the Confederation, asserted their authority, as guardians of a fundamental

<sup>41</sup> See *Bonham's Case*, 8 *Coke Reports*, 118a.

<sup>42</sup> *Law of Nations* (1773).

<sup>43</sup> *Selected Essays in Anglo-American Legal History* (1907), I, 413.

<sup>44</sup> *Rights of the British Colonies Asserted* (1764), p. 70.

<sup>45</sup> A. C. McLaughlin, *The Courts, the Constitution, and Parties* (1912) pp. 70-71.

law, to pass upon the acts of the other departments of government.<sup>46</sup> Referring sometimes to the law of nature, sometimes to the fundamental principles of the English body of liberties, sometimes to a written charter or constitution, colonial and state courts steadily asserted their right to annul acts of the other departments of government, and prepared the way for the adoption of similar power by the federal courts.

The superior authority of a written constitution to ordinary law was also recognized by some states<sup>47</sup> in the establishment of a Board of Censors, whose particular duty it was "to inquire whether the constitution has been preserved inviolate in every fact; and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are entitled to by the constitution."<sup>48</sup> New York provided for a Council of Revision,<sup>49</sup> which was charged with the special duty of guarding the spirit of the fundamental law and returning to the legislature bills which it considered contrary to the constitution. These methods of safeguarding the constitution fell into disuse and were abandoned in favor of the growing power of the courts to safeguard the fundamental law against legislative encroachment. In the Constitutional Convention of 1787, however, a Council of Revision was proposed, and this led to considerable discussion of the power and functions of the judicial department. Arguments in favor of giving the federal courts the power to declare laws invalid were strongly asserted by some, and were bitterly opposed by others. Wilson argued that the judges should, by the weight of their opinions, counteract "the improper views of the legislature." Luther Martin believed that the judges should have a negative on the laws in considering their constitutionality. Hamilton and Madison also favored judicial review of legislation. The group led by Gerry, Dickinson, and Pinckney, who believed in legislative supremacy, disapproved of the power of judges to set aside law, and argued that if they had such power they would ultimately become the lawgivers.

The issue was left unsettled in the Constitution, though a majority of the men who were most influential in its creation

<sup>46</sup> C. G. Haines, *American Doctrine of Judicial Supremacy* (1914), Chs. IV-V.

<sup>47</sup> Pennsylvania and Vermont.

<sup>48</sup> Pennsylvania Constitution of 1776.

<sup>49</sup> New York Constitution of 1777.

avored the policy of judicial review of legislative enactments on the question of their constitutionality. They held that the state courts had exercised such power without any definite grant, and that the federal courts might assume the same power, even though the Constitution was silent on the question.<sup>50</sup> Most of the leading members of the Convention regarded the nullification of unconstitutional laws as a normal function of the judiciary. In speeches in support of the Constitution before the state ratifying conventions, frequent assertions were made in support of judicial review. In Virginia, John Marshall stated that if the legislature made a law "not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the Constitution which they are to guard. . . . They would declare it void."<sup>51</sup> In Pennsylvania, Wilson declared that "if a law should be made inconsistent with those powers vested by this instrument in Congress, the judges, as a consequence of their independence, and the particular powers of government being defined, will declare such law to be null and void."<sup>52</sup> In *The Federalist*,<sup>53</sup> Hamilton stated the same doctrine with clear logic that influenced the later decisions of Marshall. He denied that Congress should be the final judge of its own power, and said that "it is far more rational to suppose that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority." The Judiciary Act of 1789, passed by the Federalists against strong opposition in Congress, clearly recognized the right of the Supreme Court to declare acts of Congress void.

Nevertheless, the federal courts were slow in attaining a position of prominence in the national government. The power of the state courts was strengthened by the reaction which followed the adoption of the Constitution. Chief Justice Jay resigned, stating that the federal judiciary was "so defective that it would not obtain the energy, weight, and dignity which was essential to its affording due support to the national government." Attorney General Randolph regretted that the federal judiciary was not "a resource against the infractions of the Constitution on the one hand, and a steady asserter of federal rights on the other."

<sup>50</sup> C. A. Beard, *The Supreme Court and the Constitution* (1912).

<sup>51</sup> Elliot's *Debates*, III, 553.

<sup>52</sup> J. B. McMaster and F. D. Stone, *Pennsylvania and the Federal Constitution* (1888).

<sup>53</sup> No. 78.

Several cases<sup>54</sup> involving the question of constitutionality came before the Supreme Court during the period from 1789 to 1800, and the court clearly laid down the doctrine that the Constitution was the supreme law of the land and that it was the duty of the court to declare federal or state statutes in conflict with it null and void. The court took, however, a somewhat timid attitude toward these cases, and stated that since to declare a law void "is of a delicate and awful nature, the court will never resort to that authority but in a clear and urgent case." As one justice said, the obligation to act contrary to a law of Congress "excited feelings in us which we hope never to experience again." In 1800 Justice Chase said: "Although it is alleged that all acts of the legislature, in direct opposition to the prohibitions of the Constitution, would be void, yet it still remains a question, where the power resides to declare it void."<sup>55</sup>

However, when the Kentucky and Virginia Resolutions were submitted to the state legislatures in 1798 and 1799, several of them took the position that the Supreme Court, rather than the states, should decide when the Constitution was infringed. Rhode Island asserted that the Constitution "vests in the federal courts, exclusively, and in the Supreme Court of the United States, ultimately, the authority of deciding on the constitutionality of any act or law of the Congress of the United States"; and Pennsylvania replied that the people of the United States have "committed to the supreme judiciary of the nation the high authority of ultimately and conclusively deciding upon the constitutionality of all legislative acts." Nevertheless, it was not until John Marshall became Chief Justice that the Supreme Court clearly defined the relations of the three departments of government to one another, and unequivocally asserted its right to declare laws unconstitutional. In *Marbury v. Madison* (1803)<sup>56</sup> Marshall insisted that the people have the original right to establish the basic principles of government, that the Constitution created by the people of the United States is the supreme law of the land, that it organized the government and assigned to the different departments their respective powers, that the powers of the legislatures are definitely limited, that any act contrary to the Constitution is not law, and

<sup>54</sup> For example, *Hayburn's Case* (1792), 2 *Dallas*, 409; *Vanhorne's Lessee v. Dorrance* (1795), 2 *Dallas*, 304; *Calder v. Bull* (1798), 3 *Dallas*, 386; *Cooper v. Telfair* (1800), 4 *Dallas*, 14.

<sup>55</sup> *Cooper v. Telfair*, 4 *Dallas*, 19.

<sup>56</sup> 1 *Cranch*, 137.

that it is the power and duty of the judicial department to say what the law is and to decide in case of conflict. Marshall, an ardent Federalist, welcomed the opportunity to make a positive assertion of the theory of judicial control over legislation.

This doctrine was not accepted without opposition.<sup>57</sup> In the states, the legislatures had frequently objected<sup>58</sup> to the assumption by the courts of the right to declare laws unconstitutional, and had even attempted to censure or impeach the judges who asserted this power. Randolph, Mason, and Gerry, who refused to sign the Constitution in the Federal Convention, objected to the lack of limitations upon the judicial power. Madison doubted "whether it was not going too far to extend the jurisdiction of the court generally to cases arising under the Constitution, and whether it ought to be limited to cases of a judicial nature."<sup>59</sup> He believed that the meaning of the Constitution could be determined by the legislature as well as by the judiciary. Jefferson, a bitter opponent of Marshall, lamented the fact that the Federalists had retired to the judiciary and from that bulwark were to destroy the principles of Republicanism. He said: "The Constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary which they may twist and shape into any form they please." The Republicans made a determined effort to crush the power of the federal judiciary.<sup>60</sup> They denied that the Constitution gave the judiciary the right to control the other departments of government. They argued that all branches must be responsive to public will, and that to permit the judiciary, the department most independent of public control, to exercise such extensive powers was dangerous to the principles of free government. Jefferson refused to carry out Marshall's decision, referring to it as an "obiter dissertation" of the Chief Justice. He remained a consistent opponent of Marshall's theory of federal supremacy and of judicial control, writing frequent letters after his retirement to private life in support of his doctrine of the independence and equal authority of the departments of government. "The great object of my fear," he wrote in 1820, "is the federal judiciary." He argued that to allow the judiciary to determine constitutional questions would "place us under the

<sup>57</sup> C. G. Haines, "The Conflict over Judicial Powers," in *Columbia Univ. Studies*, XXV, 1 (1906).

<sup>58</sup> See the controversy over the case of *Trevett v. Weeden* in Rhode Island.

<sup>59</sup> Farrand, *Records of the Federal Convention* (1911), II, 430.

<sup>60</sup> Note the impeachment of Justice Chase, and the numerous proposed amendments to the Constitution to limit the powers of the federal judiciary.



despotism of an oligarchy," and feared that the Supreme Court, as a part of the national government, would inevitably undermine the rights of the states.<sup>61</sup> On the other hand, Marshall wrote that if the theory of the Republicans triumphed, "the Constitution would be converted into the old Confederation."

Numerous other decisions of Marshall tended to increase the authority of the federal government and to strengthen the position of the judiciary. In the case of *Fletcher v. Peck*<sup>62</sup> (1810), an act of a state legislature was declared unconstitutional and the state of Georgia was emphatically told that it was not sovereign, but was a member of the American Union, under a Constitution which placed limitations upon the legislatures of the states. In *Martin v. Hunter's Lessee* (1816),<sup>63</sup> the supremacy of the Supreme Court was maintained over the highest tribunal of the state of Virginia, and the court ruled that the laws of the states were subject to the appellate power of the federal tribunal whenever the Constitution, laws, or treaties of the nation were concerned. In 1816, in the case of *Dartmouth College v. Woodward*,<sup>64</sup> Marshall laid down the principle that a charter was a contract, and the court nullified a law of New Hampshire which altered the charter of Dartmouth College against the will of its trustees. Since the state legislatures were the source of numerous charters to corporations of all kinds, whose regulation came under the police powers of the states, this decision seemed to subject the various industrial, financial, and educational corporations to the authority of the national judiciary. The Dartmouth College case was notable for the argument delivered before the court by Webster. Webster was much influenced by Harrington, and returned persistently to the doctrine of economic determinism. He believed that power naturally and necessarily followed property, and that the weight of each person in political affairs should be determined by his stake and interest in society.<sup>65</sup> By engrafting upon the

<sup>61</sup> For other Republican attacks on Marshall and the Supreme Court, see John Taylor, *Construction Construed*; and Judge Spencer Roane's articles, under the name of Algernon Sydney, in the *Richmond Enquirer*. The opposition in Virginia was especially bitter. See W. E. Dodd, "Chief Justice Marshall and Virginia," in *American Historical Review*, XII, 776-787 (1907).

<sup>62</sup> 6 *Cranch*, 37.

<sup>63</sup> 1 *Wheaton*, 304. The decision in this case was written by Justice Story.

<sup>64</sup> 4 *Wheaton*, 518.

<sup>65</sup> For Webster's earlier political philosophy, see his speech on "The Basis of the Senate," delivered before the Massachusetts Constitutional Convention (1820), and his Plymouth speech on "The First Settlement of New England."



Constitution the principle that a contract lies beyond the reach of legislative power to annul, the decision in the Dartmouth College case assured greater security for private property than under any other judicial system in the world.

In the case of *McCulloch v. Maryland* (1819),<sup>66</sup> Marshall upheld the power of Congress to charter a bank under the "implied power" of adopting "necessary and proper" means to carry out a legitimate end. "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional." This decision opened the way for an enormous expansion of federal authority. In the case of *Cohens v. Virginia* (1821),<sup>67</sup> Marshall laid down the principle that the general government, though limited as to its objects, is supreme with respect to those objects; and that the meaning of the Constitution, laws, and treaties of the United States is to be determined finally by the Supreme Court, and not by the courts of the separate states. In *Gibbons v. Ogden* (1824),<sup>68</sup> Marshall asserted that interstate commerce was "not merely traffic but was commercial intercourse which is not a part of the purely internal commerce of a single state." These principles found application and enlargement in the growing control of the federal government over business.

In *Johnson and Graham's Lessee v. McIntosh*,<sup>69</sup> Marshall indicated his imperialistic attitude by stating that "conquest gives a title which the courts of the conqueror cannot deny, whatever the private and speculative opinion of individuals may be, respecting the original justice of the claim which has been successfully asserted." In the case of the *American Insurance Company v. Canter*<sup>70</sup> (1828), Marshall finally settled the controversy over the constitutionality of the acquisition of territory by stating that "the Constitution confers absolutely on the government of the Union the powers of making war and of making treaties: consequently that government possesses the power of acquiring terri-

<sup>66</sup> 4 *Wheaton*, 316. Marshall had previously suggested the doctrine of implied powers in *U. S. v. Fisher* (1804), when he said: "Congress must possess the choice of means, and must be empowered to use any means, which are in fact conducive to the exercise of a power granted by the Constitution." 2 *Cranch*, 358.

<sup>67</sup> 6 *Wheaton*, 264.

<sup>68</sup> 9 *Wheaton*, 189.

<sup>69</sup> 8 *Wheaton*, 588.

<sup>70</sup> 1 *Peters*, 511.

tory either by conquest or by treaty." This made it possible for the United States to enter upon its career of imperial expansion and to take its place among the great powers of the world.

In spite of the protests of the Republicans and their efforts to curb its powers, the Supreme Court, under Marshall, continued the development of the national theory of Union which had been so successfully begun by James Wilson during the twelve years of Federalist supremacy. Framed largely by one mind and upon a consistent theory, the decisions of this period formed the starting point from which the Supreme Court has developed the great structure of constitutional law as it stands to-day.<sup>71</sup> Not until the Democratic party, with its particularistic tendencies, came into power was the authority of the court seriously impaired, or the growth of national spirit seriously retarded. In his political doctrines, Marshall favored national unity, strong government, and judicial supremacy; in his economic doctrines, he supported the security of private property and federal regulation of business; in his foreign policy, he approved an imperialistic program of expansion. In his opinions and writings, as in those of Kent and Story, the earlier natural-law ideas survived. The influence of the introductory part of Blackstone's *Commentaries* continued to be in the ascendant during this most important period of American legal history.<sup>72</sup> Marshall made the Supreme Court one of the great political forces of the country; he formulated for a people whose thought was permeated with legalism the principles upon which the ordered growth of their nation has depended.

In 1830 the French statesman Alexis de Tocqueville visited America and was impressed by the interest of the Americans in legalistic questions. He wrote: "Scarcely any political question arises in the United States which is not resolved sooner or later into a judicial question. Hence all parties are obliged to borrow in their daily controversies the ideas, and even the language peculiar to judicial proceedings . . . The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society." He believed that only through the Supreme Court could the forces of

<sup>71</sup> See the *View of the Constitution*, written by Justice Baldwin, an associate of Marshall.

<sup>72</sup> C. G. Haines, "The Law of Nature in State and Federal Decisions" in 25 *Yale Law Journal*, 617.

growth liberated by the new frontier democracy be kept within the bounds of existing institutions. "The peace, the prosperity, and the very existence of the Union are vested in the hands of the seven federal judges. Without them the Constitution would be a dead letter: The executive appeals to them for assistance against the encroachments of the legislative power; the legislative demands their protection against the assaults of the executive; they defend the Union from the disobedience of the states, the states from the exaggerated claims of the Union, the public interest against private interests, and the conservative spirit of stability against the fickleness of democracy." This is a high tribute to the position to which Marshall had raised the Supreme Court.

#### 4. GROWTH OF NATIONALISM AND SECTIONALISM

The period of Republican supremacy was characterized by geographic, economic, and political expansion. The frontier was extended beyond the Mississippi, manufactures and agriculture made rapid progress, and the power of the national government was expanded by acts of Congress and by decisions of the Supreme Court. This process, which was largely the work of a group of young leaders who had grown up under the Constitution, and who were willing to act with energy on the need of the times as they found it, brought new forces and new issues into American politics and opened such questions as States' rights, protectionism, internal improvements, the status of territories, sectional rivalries, and slavery, which formed the leading problems in American political thought during the middle period of our national history. The Republican party abandoned its policy of particularism and became strongly nationalistic. As Josiah Quincy said, it "out-Federalized Federalism." Only a few of the "old Republicans," such as John Randolph, opposed the strong drift toward nationalism. This tendency was especially marked after 1815. Before that year our chief concern was with foreign affairs, partly because, as a new nation, we were compelled to adjust our relations with foreign powers, partly because we could not free ourselves from the influence of the prolonged commotion of the French Revolution. After 1815 the government gave its attention to domestic affairs; and the new group in control, confident of the future and boldly American, was no longer distrustful of federal centralization. It had also lost its fear of the army and navy, which the old

Republicans had considered dangerous to liberty, and was willing to make adequate provision for national defense. As Monroe said, we were pledged to "maintain our rank among the nations."

The new national consciousness of the period was reflected in American literature. In the early part of the nineteenth century, the indifference of Europe to American literary efforts was expressed in the scornful question of Sydney Smith; "Who reads an American book?" Many American writers, in order to secure favorable notice, affected English ways or signed their books by English names. Before the end of this period Cooper's romances were published in thirty foreign cities, and were read throughout the world. Irving was placed, even by British critics, among the leading living writers; and Bryant, Poe, and other writers produced works of which America could be proud. In contrast to the historical and theological bent of colonial writers and to the political interests of the Revolutionary authors, the new national literature was original, in harmony with its natural environment, and of marked individuality. Much of it had a decided romantic tendency, the indirect result of German influence. Emphasis continued to be laid on moral and religious sentiments, but there was also a noticeable quality of intense patriotism. This appears in the national songs of Pinckney; Halleck, and Drake, in Bryant's verse, and in popular lyrics such as "The American Flag," "The Star-Spangled Banner," and "Home, Sweet Home." In the late twenties Jared Sparks began his vast labors of collecting and editing historical documents,<sup>73</sup> taking care to alter and embellish the writings of the Patriot Fathers so as to cover their human weaknesses and show them only in a heroic light. Americans began to feel reverence for their past, confidence in their future, and pride in national unity.

When the Second National Bank was chartered in 1816, five of the members of the committee that reported the bank bill were Southerners, and its chairman was Calhoun. In contrast to the opinion of Southern statesmen, a quarter of a century earlier, that Hamilton's bank was an undue extension of the powers of Congress, Calhoun now argued that any discussion of the constitutional aspects of the question was "a useless consumption of time." Henry Clay, who had opposed the rechartering of the old bank, left the Speaker's chair to support the bill for the new bank, and stated that he was "willing to sacrifice the pride of consistency rather

<sup>73</sup> His *Library of American Biography*.

than the welfare of the country." Hamilton's arguments for the charter of the first bank in 1791 were widely reprinted by the Republican press.

The growth of nationalistic spirit was also manifest in our tariff policy and in the adoption of the principle of protection. Our first tariff rate, intended mainly for revenue, had been about five per cent. This was gradually increased to 12½ per cent in 1812. To raise funds for the war it was then doubled, with the proviso that it should fall to the original level one year after peace. At the close of the war, however, the newly established American manufacturers, who had grown prosperous when English goods were shut out by the Embargo and by the war, were alarmed lest the reduction of duties should bring them into dangerous competition with British manufacturers, who had accumulated vast stocks, produced at cheap rates and selling so low as to ruin American competitors. England's policy was to dump her accumulated surplus in America at low prices, in order, as Lord Brougham said in Parliament, to "stifle in the cradle those rising manufactures in the United States which the war had forced into existence, contrary to the natural course of things." American manufacturers called on Congress for protection.

The commercial interests, which thrived on free importation, opposed this request; but as they had opposed the war and were mainly Federalists, their attitude received little consideration. The agricultural interests of the South joined with the Northern manufacturers in passing the tariff of 1816, which even increased the double duties levied for the support of the war. The new nationalists wished to make the nation economically self-sufficient and independent of foreign supplies in case of war. Our dignity as a nation required that we should not be made an economic satellite of Great Britain. While Randolph, with his strong leaning toward States' rights, attacked the tariff as a "system of bounties to manufacturers," at the expense of the planters,<sup>4</sup> Calhoun argued that "it is the duty of the country as a means of defense to encourage the domestic industry of the country." He also believed that a policy of protection would bind the different sections of the country together, and that mutual dependence of the sections would prevent disunion and strengthen the national attitude. Jefferson, who in the earlier period had believed that only an agricultural nation could remain stable and democratic, now favored

<sup>4</sup> *Annals of Congress*, 14th Congress, 1st sess., pp. 686-688.



manufactures in order to avoid dependence upon a foreign country. Madison recommended protection in his last two messages to Congress, and Monroe expressed the same sentiments in his inaugural address. The Northern manufacturing interests rejoined that the Republicans had been converted to "sound national doctrines."

The causes of the movement in favor of protection were various. On the one hand, there was a collapse in the prices of land and agricultural products, which had been inflated during the years 1815-1818. At the same time, the foreign market for grain and provisions, which had been profitable during the Napoleonic wars, was almost entirely lost. On the other hand, a number of manufacturing industries had grown up, but were beset by the usual difficulties of new enterprises competing with older establishments. The tendency to seek relief in legislation, usual in times of industrial crisis, led the farmers to ask for home markets and the manufacturers to demand protection for young industries. The distress of the period brought out a crop of pamphlets<sup>75</sup> in favor of protection, of societies and conventions for the promotion of domestic industry, of petitions and memorials to Congress for higher duties. The powerful hold which protective doctrines then obtained influenced the country long after the immediate effects of the crisis had passed away.

After 1816 the manufacturers continually demanded higher tariffs. They did not argue then, as later, for the protection of American wages and of American standards of living, but laid chief emphasis on the necessity of securing an indefeasible supply of articles necessary to life and especially to national defense. They also argued that it would further the interests of agriculture in furnishing the raw materials of manufacture, and that since manufactures had been stimulated by the Embargo and by the war, and capital had been invested in them, it would not be fair to permit them to be destroyed by foreign competition in time of peace. The South, which had at first accepted the protective policy, soon had reason to regret its action. With westward expansion, the area of cotton growing was increased, and land values fell steadily. The South, lacking manufactures, blamed its suffering on the inequality of the tariff, which built up the industrial sections of the country, but compelled the South to pay high prices for its sup-

<sup>75</sup> Especially Matthew Cary, *Appeal to Common Sense and Common Justice* (1822); *The Crisis: A Solemn Appeal* (1823). *Niles's Register* after 1819 became a tireless advocate of protection.



plies. The Northwest, while agricultural, did not feel the pressure in the same way. Improved transportation steadily lowered the cost of its supplies, and land values increased with the growth of population. Besides, the West was optimistic and confident of the future of America. It adopted the theory of the home market. Henry Clay, in announcing his "American System," said: "Let us have manufactures to develop our own cities, which will purchase our own raw product." This idea found popular response in the new West and led it to join for a considerable time with the North in support of protection. The patriotic argument was strongly stressed. Clay urged the accomplishment of industrial independence of Europe as a natural corollary of political independence. Besides, the opposition between commerce and manufactures in New England came to an end with the triumph of the latter, and that section became almost unanimous in its support of the tariff policy. Webster, as Senator from Massachusetts, said that manufactures had progressed so far in his section that protection was henceforth its chief interest.

The tariff thus became a sectional policy, with the South in the minority. The tariff of 1828, known as the "tariff of abominations," with its high duties, was especially obnoxious to the South, and seemed to it to indicate the adoption of protection as a permanent national policy. South Carolina took the lead in opposition and fell back upon the usual weapon of the minority, the doctrine of States' rights and nullification. In 1827 appeared "The Crisis," a series of letters by Turnbull, an extreme states' rights man, urging that South Carolina should "resist oppression." A strong party in the state, which was hostile to the national policy of Calhoun, held meetings of protest and gave its cause a constitutional bias by arguing that the policy of protection was not justified by the fundamental law of the United States. The governor of South Carolina, in his message to the legislature, denounced the tariff act, and urged the legislature to declare it unconstitutional. Calhoun, who viewed the growing feeling in the South with alarm, realized that he must join it or attack it, and decided upon the former course. In 1828 he wrote the document known later as "The South Carolina Exposition."<sup>76</sup> It was prepared at the request of the States' rights party and was submitted to the legislature as the report of a committee on relations with the federal

<sup>76</sup> Calhoun's *Works* (ed. 1855), VI, 1-59. See D. F. Houston, *Nullification in South Carolina* (Harvard Studies in History, 1893), Ch. V.

government. The "Exposition" went back to the Kentucky and Virginia Resolutions of 1798 for its arguments. It declared that the federal Union was a compact created by equal states; that the federal government, created by the states, was their agent to carry out powers delegated to it; that the Constitution was the body of instructions created by the states for that purpose; that any action of the agent was null and void when it violated the instructions; and that it was for the states to determine when the instructions were violated. It held that since the protective tariff was not authorized by the Constitution, the sovereign state of South Carolina might lawfully resist its execution within her borders. In the same year protests from the legislature of Georgia were presented to Congress.<sup>77</sup> They entertained "no doubt but that the Constitution of the United States is a federal compact, formed and adopted by the states as sovereign and independent communities," and asserted the right of the states to refuse obedience to any act of the national government which violated the Constitution. These resolutions objected specifically to the tariff policy of the government, to the policy of internal improvements, and to any interference in the slavery question. This declaration was widely published and found ready acceptance among the people of the South, who were exasperated by a system of taxation from which they received no benefits but which imposed upon them heavy burdens. It marked Calhoun's break with the nationalism which he had so ardently championed in the decade following the War of 1812. From this time forward, while the spirit of nationalism increased in the North and the West, the doctrine of States' rights became increasingly popular in the South, and Calhoun became its recognized spokesman.

In the opinion of some historians, no "single factor in American life has had so continuous and decisive an influence as our ever-westward moving frontier."<sup>78</sup> The migration of population into the lands west of the Alleghenies in some respects strengthened the national spirit, in others created issues that led to sectional interests. Some writers believe that American parties resulted from the westward extension of population. "The origin of our parties is therefore to be sought in the variation of social types incident to the westward movement of population from the

<sup>77</sup> MacDonald, *Select Documents of United States History*, No. 45.

<sup>78</sup> D. S. Muzzey, *The United States of America* (1922), I, 290. See F. J. Turner, *The Frontier in American History* (1920).

Atlantic Coast; and our party history is closely connected at every epoch with the changes resulting from each stage of the westward advance. It was the development of a group of inland settlements differing in important ways from the coast communities which first gave rise to those conflicting economic interests and social ideals which have furnished the causes of party groupings throughout our history."<sup>79</sup> Even in colonial days there was a marked contrast between the merchants and planters of the coast region and the pioneers of the "back country," who desired to escape taxation and who opposed the aristocratic pretensions of the propertied classes. More than 100,000 settlers had entered the Western lands before Washington's inauguration, and they had projected a number of new states in that region. These pioneers were self-reliant and adventurous, and the conditions of life beyond the mountains enhanced those qualities. They formed "bodies politic" and "associations" and carried a new spirit of independence<sup>80</sup> into the Western lands. There were many protests against the depopulation of the Eastern states. Governor Wolcott of Connecticut considered an investigation of the causes which took vast numbers away from New England the most important subject that could occupy the attention of the legislature; and a committee of the North Carolina Legislature complained that it was "mortifying to see that thousands of rich and respectable citizens were moving west each year." On the other hand, the conservative elements of the East frequently welcomed the departure of the "lawless mobs." President Dwight of Yale College thanked Providence for "opening in the vast western wilderness a retreat sufficiently alluring to draw them away from the land of their nativity." The people who formed this new frontier democracy cared little for fine-spun constitutional controversies. They revered the Constitution and appealed to it when Congress attempted to interfere with their own freedom of action or that of their state, but they were willing to brush it aside if it stood in the way of any measure they wished the government to undertake. They generally favored States' rights, but were not strict constructionists. Their religion also took on the prevailing democratic and emotional spirit. Revivals and camp meetings were popular, and humanitarian movements for the betterment of man-

<sup>79</sup> H. C. Hockett, *Western Influence on Political Parties to 1825* (1917), p. 9.

<sup>80</sup> Note the language of the convention that attempted to set up the state of Franklin in 1785.

kind, for the heathen, the insane, the drunkard, the negro, women, children, the ignorant, and the poor received popular support. The War of 1812 aroused much interest in the rich lands of the Northwest, and as soon as peace was secured a great movement of population, partly from Europe and partly from the East, set toward that region. "Old America seems to be breaking up, and moving westward,"<sup>81</sup> wrote Morris Birkbeck in 1817.

The settlement of the West opened important questions in social, economic, and political life. First among them was the problem of transportation. The desire to open up the Western markets for the manufactures of the East, and to bind together the sections separated by the mountains combined to stimulate a demand for internal improvements. The earlier plans of Jefferson and Gallatin for a system of roads and canals were revived and urged in Congress and in the state legislatures. In the opinion of many these improvements were of national benefit and should be given aid by the federal government. They would enhance the value of the public lands and aid in moving troops to defend the frontier. The opponents of federal aid to internal improvements argued a strict construction of the Constitution, denying that Congress had power to raise money for such a purpose. The more remote states, in New England and in the South, argued that they were local improvements, and that the cost should be paid by those who derived the benefit. In general, the West and the middle states favored the policy of federal aid, and the young leaders of the new nationalism among the Republicans gave it their support.

Porter of New York, in a speech in Congress, stated that "it is by producing a mutual dependence of interests between these two great sections, and by this means only, that the United States can ever be held together." Madison, in his last message to Congress, urged "a comprehensive system of roads and canals such as will have the effect of drawing more closely together every part of our country by promoting intercourse and improvements and by increasing the share of every part in the common stock of national prosperity." He suggested a constitutional amendment if the powers of Congress were not sufficient. Calhoun argued vigorously in Congress<sup>82</sup> for a generous application of public funds for Western improvements. He believed that it would be mutually

<sup>81</sup> *Notes on a Journey in America, from the Coast of Virginia to the Territory of Illinois* (1818), pp. 25-26.

<sup>82</sup> *Annals of Congress*, 14th Congress, 2d sess., pp. 851-857.

beneficial to the farmers and the merchants; and that, because of the increasing size of the country, it was necessary to prevent disunion. He argued a liberal and common-sense construction of the Constitution, stating that "the instrument was not intended as a thesis for the logician to exercise his ingenuity on," and that he was "no advocate for refined arguments on the Constitution." Toward the end of the Republican period the growth of sectional jealousies and rivalries destroyed the generous enthusiasm for national expansion that marked the decade after the War of 1812, and the agitation for internal improvements died down. After 1825 Calhoun would have been the last man to put forward the sentiments he expressed in 1816. Nevertheless, the controversy over internal improvements widened the gap between the Eastern and Western sections of the country. New England, in particular, feared that the rapidly growing West would displace the predominant influence in national politics held by the older states, and opposed the admission of new states from the "land beyond the Sabbath." In 1826 Timothy Flint<sup>83</sup> wrote: "The people of the Atlantic States have not yet recovered from the horror inspired by the term 'backwoodsman.' This prejudice is especially strong in New England, and is more or less felt from Maine to Georgia."

When the land west of the Mississippi began to be populated, the question of the extension of slavery was reopened. The application of Missouri for statehood in 1818 marked a critical period in American political thought. At that time the free and slave states, eleven each, were equally balanced in the Senate; but the North, because of its rapid growth in population, was predominant in the House. The Ohio River formed the boundary between free and slave territory between the Alleghenies and the Mississippi. The admission of Missouri would furnish a precedent for the immense territory of the Louisiana purchase. James Tallmadge of New York precipitated the controversy in 1819 by proposing in the House an amendment to exclude further introduction of slaves into Missouri and to emancipate gradually those already there. The discussion in Congress was bitter and vehement. Northern orators, such as King, Taylor, and Tallmadge, led the attack on slavery, while Southern speakers, such as Pinckney, Cobb, and McLean, replied in defiant terms.<sup>84</sup> It was to the interest of the

<sup>83</sup> *Recollections of the Last Ten Years.*

<sup>84</sup> For speeches of Rufus King and William Pinckney, see A. Johnston, *American Orations* (1927), I, Pt. II, 33-101.



new Republicans to keep in abeyance a question which would realign political groups, and which would prevent the enactment of such national measures as tariffs and internal improvements. Jefferson said that the debate startled him "like a fire-bell in the night," and that "in the gloomiest hour of the Revolutionary War I never had any apprehensions equal to those which I feel from this source." He feared that the Union would not be of long duration.<sup>85</sup> Warm resolutions were voted by public meetings and by legislatures North and South through the summer of 1819. Congress was flooded with petitions from societies, churches, and clubs, and the press was filled with controversial articles.

The controversy was closely connected with a sectional jealousy that had already appeared in Congress. The rule of the Virginia dynasty was distasteful to New England, and even to Republicans in the Northern and Middle states. To them it seemed that the Southerners, by extending slavery into the new lands, would establish their power in the Missouri Valley and eventually control the entire West. If this advance were permitted, a union of the South and the great Northwest, united by the bond of slavery, would dominate the future of the country as the Virginia combination ruled the present. Besides, there was a growing feeling in the North that slavery was a blot on our civilization that should be limited to as narrow an area as possible. A small group was even urging abolition. The Southern leaders wished to perpetuate Southern control in order to prevent unfavorable legislation. They feared that if the Western territory were made free land, the North would soon control Congress and might amend the Constitution with regard to the three-fifths representation of slaves, or even attempt to abolish slavery itself. Besides, Southerners were irritated by the accusation that slave-holding was a crime, and were gradually forced to defend the institution which they had formerly viewed as rather questionable.

On constitutional grounds, the North argued<sup>86</sup> that Congress

<sup>85</sup> *Writings* (Washington ed., 1854), VII, 158-181.

<sup>86</sup> On the constitutional point involved, some of the strongest opponents of slavery in the North supported the arguments of the Southern leaders in resisting what they considered to be an attack upon the principle of federal government. See the arguments of Holmes of Massachusetts and of McLane of Delaware, both of whom insisted that when new states were admitted they must come in with all the rights of the original states, and that the position of a state could not be altered by congressional limitations. They held that the Constitution alone determined the relations of the general government to the states.



had the power to admit new states, and to lay down the conditions on which it would admit them. The South replied that restrictions laid on the states, except those expressly contained in the Constitution, were invalid, and that if Congress could impose terms on the admission of a state, such state was reduced to a mere province of the central government. New states must come in as free as the original states to determine their domestic institutions. Congress might refuse to admit a state; but, once admitted, the new state possessed full sovereign rights.<sup>87</sup> Henry Clay argued that the extension of slavery would dilute the evil by spreading it over a larger area. The Northern orators ridiculed the sophistry that would attempt to exterminate a poisonous weed by spreading its seeds broadcast. The North accused the South of using the doctrine of States' rights to conceal the desire to open new territory to slavery. The South accused the North of stirring up indignation against slavery as a political device to restore the Federalists to power and to keep the South in subjection in both houses of Congress. As sentiment in North and South hardened, practical leaders became convinced that only a compromise could prevent a general disarrangement of existing party alignments; and largely through the efforts of Clay and other moderate men, chiefly in the middle states and in the northern tier of Southern states, the Missouri Compromise<sup>88</sup> was adopted. Missouri was admitted with slavery, but slavery was prohibited north of the line 36° 30' in the remainder of the Louisiana territory. The general policy of the Northwest Ordinance was followed in opening the Southwest to slavery and excluding it in the Northwest.

Rabid speakers had warned that a fire was being kindled which "only seas of blood could extinguish," and the words *civil war* and *disunion* had frequently been used. It was considered a great achievement to bring the warring factions together and to avert the threatened dangers of disunion. The full importance of the controversy was not realized until the next generation. Temporarily the compromise seemed successful in settling the slavery dispute and in preventing the formation of new parties. It produced clearer ideas upon the character of federal government and preserved the East from an illiberal political policy toward the West. Nevertheless, it stimulated abolitionist sentiment in the North, and strengthened the doctrine of States' rights in the South. It taught the

<sup>87</sup> See the famous speech of William Pinckney of Maryland in the Senate.

<sup>88</sup> W. MacDonald, *Select Documents of United States History*, Nos. 35-41.

Southern leaders that protection of their property in slaves depended upon a strict construction of the Constitution, and caused them to desert the broad national attitude which they had occupied since 1812. It gradually divided the Republican party into two branches, one holding to the wide and national view; the other retiring to the strict view of 1798 to 1812. The former finally joined with the remnants of the Federalist group and formed the National Republican or Whig party; the latter called itself the Democratic party. It revived the agitation over the ethics of slaveholding, and showed the North how firmly the extension of cotton cultivation and the invention of the cotton gin had established the institution in the South. It connected the question of slavery with that of westward expansion, emphasized sectional rivalry, and helped to detach the agricultural states of the Northwest from those of the South, and to join them, in support of the free-soil principle, with the manufacturing and commercial interests of the East. By 1820 every policy of the revival of national spirit which was so marked after the War of 1812—the National Bank, the high tariff, internal improvements, the authority of the Supreme Court—had become a subject of violent and sectional controversy, and a new alignment of parties was soon to take place.

##### 5. FOREIGN POLICY DURING THE REPUBLICAN PERIOD

From the administration of Washington to that of Monroe the United States was intensely interested in questions of foreign policy. Jefferson's first administration was distinguished chiefly by its extension of our national domain. Jefferson was an ardent expansionist, interested especially in the Western country. He had drafted the Ordinance of 1784 for the Government of the Western territory, and the adoption of many of his ideas in the famous Ordinance of 1787 set the impress of his genius on a policy of territorial government which endured until the war with Spain in 1898. He regarded the English settlements on the Atlantic coast as the "nest from which America north and south was to be peopled," and he foresaw a great republic of a hundred million in the western hemisphere. The rise of the West was intimately associated with foreign policy, for its initial impulse came largely from the vicissitudes of foreign relations.

From 1795 to 1800 the diplomacy of the United States was concerned principally with the acquisition of the delta of the Mississippi. Jefferson had stated that any foreign nation that held

the mouth of that river must be a foe of the United States.<sup>89</sup> As long as Spain retained the right to close the Mississippi, the Western farmers were shut off from the natural outlet for their produce. In 1802 a committee of the House of Representatives reported that "the possession of New Orleans and the Floridas will not only be required for the convenience of the United States, but will be demanded by their most imperious necessities. The Mississippi and its branches drain . . . one half of our whole territory. The Floridas and New Orleans command the only outlets to the sea, and our best interests require that we should get possession of them."<sup>90</sup> Meantime, Spain was stirring up discontent among the Western farmers in the hope that she could persuade them to secede from the East and come under her protection. In that way she could block American expansion. France, however, retained the hope of again securing possession of the vast domain that she had transferred to Spain. Talleyrand, who had visited the United States, and who became minister of foreign affairs under the Directory, was especially interested in that project. In a paper before the Institute in 1797, he proposed his idea of a new colonial system based on the recovery of Louisiana. His ideas became the model of Napoleon's dream of a new overseas empire, and in 1800 he forced Spain secretly to retrocede Louisiana to France.

When the mouth of the river was again closed in 1802, the indignant protests of the Western settlers compelled Jefferson to enter into the Machiavellian diplomacy of the period. He discovered that France had secured Louisiana, and sent Monroe to Paris to help Livingston try to buy the island of New Orleans. Jefferson was even willing to enter into an alliance with England for the purpose of preventing French expansion in America, and urged the creation of a maritime force for the purpose of "holding the two continents of America in sequestration for the common purposes of the United British and American nations." Interest in the Western lands made Jefferson willing to drop his doctrine of no entangling alliances and even to join with the nation which his party had generally opposed. Meantime Napoleon's difficulties in Europe, his ambitious designs on the Near East, and the failure of his effort to reconquer Santo Domingo compelled him to give up the Louisiana idea. He wished to be rid of it in the way that would do most harm to England; and, feeling that the United States

<sup>89</sup> *Writings* (Washington ed.), IV, 431-436.

<sup>90</sup> *Annals of Congress*, 7th Congress, 2d sess. (1802-1803), p. 373.

would be the commercial nation most likely to rival England, he decided to aggrandize her and secure needed revenue for his campaign by selling the province to the United States.<sup>91</sup> The American commissioners, though unauthorized to do so, accepted his offer, and were supported by the government at home, though Jefferson had constitutional scruples about the right of the national government to acquire territory, and suggested an amendment for the purpose. In the end he assumed the responsibility, and by this action abandoned the policy of strict construction and opened the way for the extension of national power along the same lines that the Federalists had favored. In a letter to the Secretary of State, he wrote: "The less we say about constitutional difficulties respecting Louisiana the better, and what is necessary for surmounting them must be done *sub silentio*."<sup>92</sup> The Federalists, who were beginning to adopt the strict construction and States' rights policy of the party out of power, opposed the annexation of the territory, argued that the Constitution gave the national government no right to acquire territory by treaty, and put forward many of the arguments that have since been used against national expansion.<sup>93</sup> The purchase quieted the timid spirits that had talked of the Mississippi as the "natural boundary" of the United States, and gave a stimulus to the idea of a "manifest destiny" to push to the Pacific. It also brought with it boundary disputes that resulted in a half-century of diplomatic wrangling.

The arguments for and against the acquisition of Louisiana throw considerable light on the political thought of the period. It was stated by some that in strict international law France had no title to the territory. To this Jefferson replied that we had our title from Napoleon, and that he "did not doubt his guarantees." Some argued that the United States could not constitutionally acquire territory by treaty.<sup>94</sup> Pickering argued that the "assent of each individual state was necessary for the admission of a foreign country as an associate in the Union." Griswold argued that the Lower House must participate in all admissions of territory and opposed the usurpation of executive power by the President. Many objected to the distance and size of the new territory and believed that its population would become alienated from the interests of

<sup>91</sup> *American State Papers, Foreign*, II; *Public Lands*, I.

<sup>92</sup> *Writings*, VIII, 245.

<sup>93</sup> *Annals of Congress*, 8th Congress, 1st sess., pp. 31-58.

<sup>94</sup> For the Senate debate on the issue of constitutionality, see *Great Debates in American History*, II, 104.

the remainder of the Union. Others objected that it would draw valued inhabitants from other parts of the United States. The danger of expansion and imperialism to free institutions was answered by Elliot, who said: "If we cannot find in the peculiar principles of our form of government, and in the virtue and intelligence of our citizens, a sufficient security against the dangers from a widely extended territory, in vain shall we seek it elsewhere. There is no magical quality in a degree of latitude or longitude, a river, or a mountain." John Randolph defended the ability of the country to bear the strain of colonies by saying: "It is dreaded that so widely extended a country cannot subsist under a republican government. If this dogma be indisputable, I fear we have already far exceeded the limits which visionary speculatists have supposed capable of free government."

After the purchase of Louisiana the acquisition of Florida was inevitable. American settlers poured into West Florida and in 1810 called a convention, declared themselves an independent state, and were taken over by President Madison, in spite of Spain's protests, as a part of the Louisiana purchase. When England, which had designs on the Floridas, protested, Madison laid down this important principle of foreign policy: "The United States could not see, without serious inquietude, any part of a neighboring territory, in which they have, in different respects, so deep and so just a concern, pass from the hands of Spain into those of any other foreign power."<sup>95</sup> Meantime bandits, pirates, and Indians from East Florida were annoying Americans along the border, and the duplicity of Spain and the incendiary activities of British agents finally led Secretary of State Adams, under Monroe, to notify Spain that unless she could police the Floridas she must cede them to the United States. In addition American settlers were casting greedy glances at Texas. In 1803 Jefferson had no idea that Louisiana included Texas, but his ideas expanded<sup>96</sup> and he pushed American claims in that direction. Under Madison and Monroe there was much diplomatic wrangling over the disputed area between the Mississippi and the Rio Grande, and in 1819 a treaty was finally negotiated by which the United States gave up her claim to Texas and received all the Floridas. By the time this treaty was finally ratified, it was too late for Spain to save Texas.

<sup>95</sup> Richardson, *Messages and Papers of the Presidents*, I, 488.

<sup>96</sup> *Writings*, VIII, 261-3.



In addition to this process of territorial expansion, American diplomacy was involved in the Napoleonic wars in Europe. After a few years of peace, hostilities between France and England were reopened in 1803, and the American merchant marine again began its lucrative trade of supplying the belligerents. American vessels carried contraband and non-contraband goods, and entered the colonial trade of the belligerents by the device of the broken voyage in the efforts to evade the Rule of 1756. British merchants protested<sup>97</sup> that the American commercial activities were a disguised war on Great Britain, and that under the guise of a neutral flag they were engaging in a forbidden trade between France and the French colonies. When decisions in British courts<sup>98</sup> went against the American point of view, indignant protests of the American shippers filled the American press. England, however, enforced her seizures and tried to break up the American efforts to evade the rules of international law. In the contest between England, which controlled the sea, and France, which was supreme on land, the rules of international law were ignored and the rights of neutrals were given little consideration. Blockades and paper decrees laid American shipping open to seizure by both belligerents and practically ruined American commerce. Capital in America was driven from the merchant marine into factory building, and interest in manufacturing was given a decided stimulus. The Virginia dynasty, which controlled American policy, had no desire to fight to protect the trade of the Federalist capitalists. Jefferson did not want the United States to become an industrial or commercial nation. He believed that the foundations of national prosperity and progress rested on agriculture, and was willing to have America abandon the seas. His pacifistic leanings and his humanitarian attitude toward foreign affairs made him anxious to avoid war.<sup>99</sup> In his first inaugural address he summed up the principles of his foreign policy as "peace, commerce, and honest friendship with all nations, entangling alliances with none." Non-importation acts and finally the Embargo<sup>100</sup> were the weapons he employed.

<sup>97</sup> James Stephen, *War in Disguise; or, the Frauds of the Neutral Flags* (1805).

<sup>98</sup> The "Immanuel," 2 *C. Robinson*, p. 186 (1799); the "William," 5 *C. Robinson* (1806), p. 385.

<sup>99</sup> L. M. Sears, "Jefferson and the Law of Nations," in *American Political Science Review*, XIII, 379-399 (Aug., 1919).

<sup>100</sup> For New England opposition to the embargo, see *An Address to the Citizens of Massachusetts on the Causes and Remedy of our National Distress*, by a Fellow-Sufferer (1808).



Jefferson was an eager student of international law, familiar with the leading thinkers of the eighteenth century, especially Vattel. He based his conception of international law on the theory of compact and the recognition of a state of nature in which man was in a condition of peace. These pacific ideas affected his policies, and he declared as early as 1774<sup>101</sup> for an embargo as a substitute for war. When he became President he had the opportunity to try his grand experiment in pacifism. He believed in the rights of neutrals, in freedom of commerce, in denial of contraband, and had hopes for a future of coöperative effort in a league of nations.<sup>102</sup> He believed that our best weapon of defense was "to encourage others to declare and guarantee neutral rights by excluding all intercourse with any nation that infringes them."<sup>103</sup> In a letter to the Russian Tsar in 1806, Jefferson entreated him to use his influence in favor of a "correct definition of the right of neutrals on the high seas," and suggested that excluding offenders against neutral rights from all commerce with other nations would provide an appropriate sanction, efficient and at the same time preferable to war.<sup>104</sup> Jefferson was fearful especially of the social effects of war. He held that corruption and tyranny resulted from armed conflict, and that peace had "saved to the world the only plant of free and rational government now existing in it."

Meantime, the British, desperate for lack of seamen to man their fleets, were "impressing" American seamen. In many cases these were deserters from their navy. In many cases they were naturalized American citizens, who were originally British and who under British law could not change their original allegiance. The Americans objected strenuously, however, to the British claim to visit and search American vessels in the exercise of their rules of law. There was also great lamentation<sup>105</sup> in America, especially in New England, against the Embargo as a principle of foreign policy,

<sup>101</sup> In the *Resolution of Albemarle County*.

<sup>102</sup> *Writings*, I, 100-103.

<sup>103</sup> *Ibid.*, X, 247-248.

<sup>104</sup> *Ibid.*, X, 250.

<sup>105</sup> The issues of the period were discussed in Madison, *An Examination of the British Doctrine which subjects to Capture a Neutral Trade not open in Time of Peace* (1806); and in many pamphlets, such as *Old England and America against France and All Europe* (1807); *Peace without Dishonor: War without Hope, being a Calm and Dispassionate Enquiry into the Question of the Chesapeake by a Yankee Farmer* (1807); A. Baring, *An Inquiry into the Causes and Consequences of the Orders in Council and an Examination of the Conduct of Great Britain towards the Neutral Commerce of America* (1808).

and it finally broke down, having ruined commerce and injured agriculture, though stimulating manufactures. When Madison became President he endeavored to have France and England repeal their obnoxious decrees and orders, but American diplomacy was in a humiliating position; and, pushed by the threats of Calhoun, Clay,<sup>106</sup> and the War Hawks who represented the new national spirit, Madison drifted into war against England, which his party naturally held most to blame. The new war leaders were nationalists; they wished to fight to vindicate the honor of their country, smirched by long submission to the indignities of the European belligerents. Many of them were indifferent as to whether they fought France or England. Calhoun, with the enthusiasm of youth, would fight both.<sup>107</sup> The new West, whose views were voiced by Henry Clay,<sup>108</sup> was especially bitter against England because of British activities in stirring up the Indians, and because of rivalry over the fur trade. It wished to show its strength and felt competent to settle its difficulties if given the opportunity. In 1810 Henry Clay said in the Senate: "The Conquest of Canada is in your power. I trust I shall not be deemed presumptuous when I state that I verily believe that the militia of Kentucky are alone competent to place Montreal and Upper Canada at your feet." At the last moment, England tried to avoid war, but the accumulated grievances of the Americans and the desire of the West to settle its difficulties forced the administration into war, in spite of the objections of the commercial states of the East.<sup>109</sup>

There was much bitter feeling against America in England, and one group of leaders urged a vigorous prosecution of the war, with no peace until a decisive victory was achieved. This point of view was urged by the *London Times*, which stated that "the subversion of the whole system of the Jeffersonian school . . . was an event to which we should have bent and yet must bend all our energies. The present American government must be displaced, or it will sooner or later plant its poisoned dagger in the heart of the parent state."<sup>110</sup> The *Times* did not represent the whole nation, and to many Englishmen the war was displeasing. Internal

<sup>106</sup> For Clay's justification of the war, see *Annals of Congress*, 12th Congress, 2d sess., pp. 667-676.

<sup>107</sup> *Works*, II.

<sup>108</sup> *Ibid.*, I, Ch. IX.

<sup>109</sup> See the speech of John Randolph in the House on Dec. 10, 1811, in opposition to the war policy. A. Johnston, *American Orations* (1927), I, 164-179.

<sup>110</sup> The *Times*, Oct. 14, 1814.

conditions in England led the Ministers of that country to listen to its bankers and merchants, who were feeling the pressure of twenty years of war and had no desire to keep up a useless contest with America, and in 1814 the British made advances to Madison looking toward peace.<sup>111</sup> The treaty of peace in 1815 settled practically none of the controverted questions. The conduct of foreign affairs during the period, however, showed the growing tendency of the Senate to take a less active part, and of the executive to take over a larger share of power. In 1805 the Senate actually went on record as asking the President to handle the grievances against England, and after the negotiation of a treaty, the Senate asked for the papers "not inconsistent with public interest." The War of 1812 gave the United States a navy, which was soon used to put an end to the payment of tribute to the Barbary pirates. It also gave a great stimulus to national spirit in America, despite the unpatriotic conduct of New England, and the adoption of the States' rights point of view by the Federalists in the Hartford convention,<sup>112</sup> which published an address filled with ideas taken from Madison's Virginia Resolution. It gave the United States an assured position, with our safety no longer depending upon the oscillations of European politics. It left the United States free from entangling alliances and able to devote itself to the problems of internal growth and expansion. It brought to an end the pro-French attitude of the Republicans and the pro-British attitude of the Federalists and removed foreign relations as a leading issue in American politics. It brought to the front a new group of statesmen whose interest was not along the Atlantic, but in the new Western lands. After 1815 American diplomacy was turned in that direction.

Even in the eighteenth century efforts were under way to secure the independence of the Spanish colonies in South America. The example of the revolt of the British colonies in North America was an object lesson to them, and the revolution in France, with which they had closer cultural relations, exerted an important influence. Hamilton planned to coöperate with a Venezuelan adven-

<sup>111</sup> For the peace negotiations, see J. Q. Adams, *Memoirs*, and Gallatin, *Writings*.

<sup>112</sup> See T. Dwight, *History of the Hartford Convention* (1833); Carey, *The Olive Branch, or Faults on Both Sides* (1814). For a good expression of the secessionist views of the New England Federalists, see Josiah Quincy, *Speech on the Passage of the Bill to Enable the People of the Territory of New Orleans to form a Constitution and State Government* (1811).

turer named Miranda <sup>113</sup> in freeing the Spanish colonies and bringing them under Anglo-American influence to balance the power of France. In 1798 Hamilton wrote to Miranda: "The plan, in my opinion, ought to be a fleet of Great Britain and an army of the United States, and a government for the liberated territory agreeable to both the coöperators." While these early efforts at independence failed, the United States was vitally interested in what happened to the remaining colonies of Europe in the New World. When Napoleon invaded Spain and removed her king, the chief bond of union of the Spanish Empire, still further impetus was given to revolt and several colonies declared their independence. When the monarchy was restored in Spain in 1814, and efforts were made to reëstablish the old colonial system and to destroy the commerce that had grown up with England and the United States, the Spanish colonies finally threw off their allegiance to the mother country.

For the next ten years the foreign policy of the United States was constantly concerned with the question of recognizing the independence of the new nations in South America.<sup>114</sup> Popular enthusiasm in the United States favored those who, like ourselves, had thrown off the European yoke. American business interests profited by a growing trade with the new nations, which would be destroyed if they were again placed under the commercial restrictions of Spain. American statesmen were also interested in destroying the influence of European nations in America, and preferred a group of weak states as neighbors, to the colonies of strong European powers. As early as 1811, when Venezuela declared her independence, President Madison, in a message to Congress, expressed a friendly interest in her affairs. Nevertheless, the American government moved cautiously in recognizing the independence of the new states. Jefferson, in accordance with his theory of government resting upon the consent of the governed and his belief in the right of revolution, had stated as early as 1792 that "it accords with our principles to acknowledge any government to be rightful which is formed by the will of the nation substan-

<sup>113</sup> W. S. Robertson, "Francisco do Miranda and the Revolutionizing of Spanish America," in *American Historical Association Reports*, I, 498-499 (1907).

<sup>114</sup> F. L. Paxson, *Independence of the South American Republics* (1903); W. R. Manning, ed., *Diplomatic Correspondence of the United States Concerning the Independence of the Latin-American Nations* (3 vols., 1926).

tially declared.”<sup>115</sup> Under Monroe, however, Secretary of State Adams counseled delay.<sup>116</sup> He held that recognition should not be given until there was no chance of the recovery of the colonies by the mother country. He said: “I am satisfied that the cause of the South Americans is just. But the justice of the cause, however it may enlist individual feelings in its favor, is not sufficient to justify third parties in siding with it. The fact and the right combined can alone authorize a neutral to acknowledge a new and disputed sovereignty.”<sup>117</sup> Monroe hesitated, partly because of the conviction, shared by Adams, that the revolutionists had not established a stable government, partly because he feared that rash action would imperil the plans of purchasing Florida. Congress under the leadership of Henry Clay constantly urged recognition. Clay urged that their revolution was parallel to our own, and that it was our duty to recognize nations whose *de facto* governments had scrapped their *de jure* kings. Besides, Clay’s “American system” involved the protection of American industry and the securing of markets, and he argued in a more practical vein that “the precious metals are in South America, and they will command the articles wanted in South America, which will purchase them. Our navigation will be benefited by transportation, and our country will realize the mercantile profits.”<sup>118</sup> He urged that we should “become real and true Americans and place ourselves at the head of the American system.” As early as 1820 he had announced the grandiose plan of establishing “a human freedom league in America, including all the nations from Hudson’s Bay to Cape Horn.” In 1822 Monroe finally recognized the independence of the new republics, in opposition to the Old World principle of legitimacy, and announced the doctrine that a people should be entitled to choose its own rulers, and that, having chosen, it would receive the recognition of the United States.

England also was interested in keeping the South American ports open to trade, and had approved the movement for independence in South America. The Europe of that day was under the domination of an alliance of emperors known as the Holy Alliance. Controlled by Metternich, it aimed to stifle democratic and constitutional agitation, to restore the principle of “legitimacy,”

<sup>115</sup> *Writings*, IV, 131.

<sup>116</sup> W. C. Ford, “John Quincy Adams and the Monroe Doctrine,” in *American Historical Review*, VII, 676-696; VIII, 28-52 (1902).

<sup>117</sup> *Senate Document* 56, 54th Congress, 2d sess., pp. 52-53.

<sup>118</sup> *Annals of Congress*, 15th Congress, 1st sess., II, 1485.



which Clay called "a soft word for despotism," in government, and to restore the revolting colonies to their former allegiance. With this policy England had no sympathy; and her foreign minister, Canning, proposed to the United States joint action against the designs of the Holy Alliance. He suggested that the two nations agree not to take any Spanish territory themselves, but to unite in opposition to the plans of the Holy Alliance. President Monroe referred the proposal to Jefferson and Madison for their advice, stating that "my own impression is that we ought to meet the proposal of the British government and to make it known that we would view an interference on the part of European powers, and especially an attack on the colonies by them, as an attack on ourselves." Jefferson replied favorably, saying that "our first and fundamental maxim should be never to entangle ourselves in the broils of Europe. Our second, never to suffer Europe to intermeddle with Cis-Atlantic affairs. America, North and South, has a set of interests distinct from Europe, and peculiarly her own. She should therefore have a system of her own, separate and apart from Europe . . . Great Britain is the nation which can do us the most harm of any one, of all on earth; and with her on our side, we need not fear the whole world. With her, then, we should most sedulously cherish a cordial friendship . . . Its object is to introduce and establish the American system, of keeping out of our land all foreign powers, of never permitting those of Europe to intermeddle with the affairs of our nations."

Madison agreed with Jefferson as to the wisdom of accepting the British proposal, and went even further, urging that Monroe should express disapproval of the late invasion of Spain and of any interference with the Greeks who were fighting for independence against Turkey. John Quincy Adams opposed any joint declaration with England, advocating an independent course of action by the United States, in accord, however, with Canning's proposal. He said: "The ground that I wish to take is that of earnest remonstrance against the interference of the European powers by force with South America, but to disclaim all interference on our part with Europe; to make an American cause and adhere inflexibly to that." He stated in Cabinet meeting that it would be more candid and dignified "to avow our principles explicitly to Russia and France than to come in as a cock-boat in the wake of a British man-of-war." Clay also urged a Pan-American system, holding that coöperation with Great Britain would bind the United States



not to acquire some of the coveted parts of the Spanish possessions, and that the United States, as the ally of Great Britain, would be compelled to play a secondary part.

Meantime, Russia notified the United States that she would not recognize the Spanish colonies, and used language rather insulting to the ideas of free government. She also announced that she intended to claim the Oregon country as well as Alaska, and warned American fishermen to stay a hundred miles offshore from those areas. This was an open menace to the United States. The South American nations also urged the United States to give them a more substantial evidence of good will than mere recognition, and to save them from the threat of the Holy Alliance. Monroe finally decided to reject Canning's proposal for joint action, and to follow Adams's plan of an American declaration. In a note to Russia he stated that "the United States of America could not see with indifference the forcible interposition of any European power other than Spain, either to restore the dominion of Spain, or to establish monarchical governments in those countries, or to transfer any of the possessions heretofore or yet subject to Spain in the American hemisphere to any other European power." He also warned Russia that the American continents were no longer open for any new European colonial establishments. In a dispatch to Canning, Monroe stated that England was a member of the "European Community," and that unless she specifically recognized the independence of the Spanish colonies, any attempt at coöperation was futile. England had two sets of policies: one European, one American. As long as she put her European interests first, America would not act jointly with her.

All these doctrines of American foreign policy were embodied in the President's message to Congress in December, 1823, and were thus called to the attention of the world. The "Monroe Doctrine"<sup>119</sup> stated that "the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers," that the United States viewed the revolutionary movements in Europe with approval, and that any attempt on the part of European states "to extend their system to any portion of this hemisphere" would be considered as "dangerous to our peace and safety." It implied that Europe had one set of political systems and America a different one, and included a

<sup>119</sup> *American State Papers, Foreign Affairs*, V.

reiteration of the doctrine of isolation and a denunciation of the European forms of government. It stated: "Our policy in regard to Europe . . . is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it . . . But in regard to these continents circumstances are eminently and conspicuously different." It involved, not a prohibition of immigration from Europe, but a prohibition of European colonization in America and of any extension of its jurisdiction in this hemisphere. Its fundamental principles were not new. They appeared in Washington's Neutrality Proclamation of 1793 and in his Farewell Address of 1796. They were frequently repeated by his successors, especially by Jefferson. The Monroe Doctrine was generally resented and ridiculed in the press of Europe, though it was praised in some European journals. In America it was received, as Webster said, "with one general glow of enthusiasm," and has ever since been the most popular slogan in American history. The Federalists supported it because it guaranteed open ports in Latin America; the agricultural interests believed it would open imperialistic opportunities in the Southwest; and democratic sympathizers saw in it a vindication of revolutionary principles and of self-government.

In South America, the Monroe Doctrine was received with considerable enthusiasm, though many Latin Americans realized that the British fleet was the real protection between them and the Holy Alliance. Latin America had no desire that the protective Monroe Doctrine should be turned into an excuse for the supremacy of the United States in the New World. Many other influences were acting on behalf of the Latin Americans, whose destiny as free nations was assured by the facts of international politics and by the progress of events.<sup>120</sup> However, some of the leaders, especially Simon Bolivar, wished to form a Pan-American alliance dedicated to the principles of freedom and equality; and a Pan-American Conference was called at Panama in 1826 to which the United States was invited. Wrangles in Congress and partisan politics prevented prompt action and no delegates from the United States attended. The United States took the position that she would not join in any assembly to legislate for the whole continent, and that she would not join with South America in guaranteeing the

<sup>120</sup> W. S. Robertson, "Monroe Doctrine Abroad in 1823-24," in *American Political Science Review*, VI, 563 (Nov., 1912).

independence of the Latin-American states.<sup>121</sup> Thus early the United States viewed with suspicion any international body which seemed likely to infringe on its national sovereignty, and preferred to maintain its freedom of action in dealing with questions as they arose.

The Monroe Doctrine was originally defensive and precautionary. Its stretching by "interpretation" began as early as 1825 when Clay warned France that we should not allow Cuba or Porto Rico to be transferred from Spain to any other European power. It has been invoked again and again to meet new phases of American policy; and many powers not originally intended have been derived from it by "implication." In this process it became increasingly aggressive and comprehensive, as our strength increased and our interests in Latin America expanded. As a result the attitude of the Latin-American states toward it changed and they came to fear American aggression more than they treasured American protection.

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## 238 HISTORY OF AMERICAN POLITICAL THOUGHT

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## CHAPTER VIII

### POLITICAL THOUGHT OF THE PERIOD OF DEMOCRATIC SUPREMACY

#### 1. GENERAL NATURE OF THE DEMOCRATIC PERIOD

The genial aristocracy of the Virginia dynasty was gradually undermined by fundamental changes beneath the surface of American life. Provisions for gradual emancipation were abolishing slavery in the North. The foundations for a free elementary school system were being laid in the Northwest. The frontier states of the West were granting the suffrage to all adult white men and were abolishing special qualifications for office-holding. In the new states, economic and social conditions were favorable to the development of democratic spirit. Frontier life produced self-reliance, individuality, independence, and a sense of equality. Land was so abundant that every man might attain a position of economic independence, and political equality was based upon a real equality. The hardy pioneers believed firmly in the sovereignty of the people and in the necessity of popular control of public affairs. Jackson said: "It is not in a splendid government supported by powerful monopolies and aristocratical establishments that they will find happiness, or their liberties protection, but in a plain system, void of pomp, protecting all and granting favors to none."<sup>1</sup> Special privilege or class exclusiveness was viewed with distrust; confidence in the people was the surest way to political advancement. A new type of political leader, the self-made man of the people, was replacing the earlier well-born and trained aristocrat.

The increase of city population and the development of other than agricultural pursuits gave a further stimulus to democracy. A population with a set of interests different from those of the landed aristocracy was coming into existence. The workingmen of the newly established factory centers of New England and the Middle states rebelled against the hampering and unsanitary conditions under which they were obliged to labor, and demanded

<sup>1</sup> Jackson's reply to the vote of censure, 1834.

equal political rights. The revolt of labor against hard and unjust conditions of life was an integral part of the democratic upheaval of Jackson's time. After 1825 labor unions, or "trade associations" as they were then called, multiplied. They sought to improve conditions of employment and began to take active interest in political life. Workingmen's parties were organized, demanding "universal education, abolition of chartered monopolies, including the United States Bank, equal taxation, revision or abolition of the militia system, a less expensive law system, all officers to be elected directly by the people, a lien law for laborers, no legislation on religion."<sup>2</sup> The ruling class had a profound distrust of the capacity of the urban population to take part wisely in government. In the New York convention one speaker referred sneeringly to the "ring-streaked and speckled population of our large towns and cities, comprising people of every kindred and tongue." The old idea of agricultural and land-owning dominance died hard. A member of the Virginia convention stated that "if there are any chosen people of God, they are the cultivators of the soil." The city laborers helped to bring about the same democratic development in the East that was being realized in the Western states. Immigrants from the Old World, who were coming in increasing numbers, joined the demand for the destruction of aristocratic privilege and for a broad suffrage and equality of opportunity. A movement of irresistible momentum<sup>3</sup> found expression in national politics in the election of Andrew Jackson, a characteristic leader of the new democracy. His defeat of John Quincy Adams, a skilled and experienced statesman, marked the end of the long line of old-school Presidents and the advent of a new type of chief executive. To many conservative thinkers, the election of Jackson seemed the victory of "King mob" and indicated the rule of an ignorant and incompetent democracy.<sup>4</sup> The very existence of republican institutions seemed threatened.

One of the most important political changes of the period was

<sup>2</sup> *Mechanics' Free Press* of Philadelphia, Apr. 16, 1831.

<sup>3</sup> For the opinions of foreign observers on the new American democracy, see Mrs. Trollope's *Domestic Manners of the Americans* (1832); de Tocqueville's *Democracy in America* (1835); von Raumer, *America and the American People* (1846); C. Dickens, *American Notes* (1842); Fanny Kemble, *Journal* (2 vols., 1832-33); M. Chevalier, *Society, Manners and Politics in the United States* (1839).

<sup>4</sup> For an example of the bombardment of ridicule aimed at Jackson by the Whigs, see the pamphlet entitled *Reminiscences: or an Extract from the Catalogue of General Jackson's Youthful Indiscretions between the Ages of Twenty-three and Sixty*. See also C. A. Davis, *Letters of J. Downing, Major* (1833).



the general abolition of religious and property qualifications for voting. When the United States was established, governing power was restricted to the freeholders, who were the political "people." In spite of stubborn resistance the property basis for voting was gradually abolished in the older states and was not adopted in the new states that entered the Union. A new democracy, based on the whole body of free, adult, male citizens thus came into existence. The commercial class, the laboring men, and those who had done military duty for the state argued that they also should have a share in governing power. Sometimes it was argued that the suffrage was a natural right, belonging to all. It was held that the state was a community of persons, not a partnership based on property; that virtue and intelligence, rather than wealth, should be the qualifications for voting; that human personality was more important than property.

The older school of statesmen opposed with bitterness the new democratic doctrines and the widening of the electorate, with its vulgarization of politics.<sup>5</sup> They believed that universal suffrage would lead to the abuse of liberty, the oppression of minorities, the disturbance of chartered privileges, the degradation of justice, unequal taxation, and crude, unstable legislation. It was urged that the freeholders were the stable and conservative class in the population and that they alone were capable of active participation in political affairs. The doctrine of Jefferson was frequently quoted, that a democracy thrives best when based upon a land-owning, agricultural people. Daniel Webster and Justice Story joined with the venerable John Adams in resisting the change in Massachusetts. In the New York State constitutional convention, Chancellor Kent declared that "universal suffrage jeopardizes property and puts it into the power of the poor and the profligate to control the affluent. Shall every department of the government be at the disposal of those who are ignorant of the importance and nature of the right they are authorized to assume?" In Virginia, Marshall, Madison, and Randolph were able to stave off the democratic movement for twenty years. In Rhode Island the resistance was so strong that Dorr's Rebellion was necessary to secure a widening of the suffrage.

After the election of Jackson, the backwoodsman, to the Presi-

<sup>5</sup> For a critical description of the working of popular suffrage at this time, see the account of Charles Lyell, the famous English geologist, in *Travels in North America* (1845), I, 227-232.

dency, the accusation of aristocracy became as dangerous to political advancement as the taint of democratic sympathies had formerly been. Men of quality and wealth more and more withdrew from active political life. As de Tocqueville observed: "As they cannot occupy in public a position equivalent to what they hold in private life, they abandon the former, and give themselves up to the latter; and they constitute a private society in the state, which has its own tastes and pleasures." The fact that Van Buren used gold plate and had a billiard table in the White House was a serious issue in the campaign of 1840. Even the Whigs took over the new political methods and slogans; and when their opponents dubbed Harrison the "log-cabin candidate," they seized on the remark and made it a symbol of honor. It showed, they said, that their candidate was a man of the people, and at every political meeting a log cabin, a jug of cider, and a coon were displayed as tokens of their candidate's love of the people. Daniel Webster regretted that he had not been born in a log cabin, but boasted that distinction for his older brother. Every candidate tried to convince the voters that he was a plain man of the people and a democratic citizen. American history was rewritten<sup>6</sup> for the purpose of glorifying democratic institutions, and American writers began to sing the praises of democracy.<sup>7</sup>

The new interest in the welfare of the masses led to countless reform movements for social betterment.<sup>8</sup> The first organized movement against alcoholic liquors began in 1824. Societies pledged to abstinence were organized in Boston, and within five years more than a thousand such societies had sprung up in all parts of the country. Later, "Washington Societies" were organized, demanding state prohibition of the liquor traffic. The woman's rights movement started about the same time, demanding at first larger rights for married women and the improvement of female education, but soon broadening out into a demand for woman suffrage. The anti-slavery movement lost its early philanthropic character and became a militant crusade under the leadership of William

<sup>6</sup> By George Bancroft, in his monumental *History of the United States*, begun in the thirties.

<sup>7</sup> The new democratic spirit in literature is noticeable in the writings of Nathaniel Hawthorne, Oliver Wendell Holmes, Henry David Thoreau, Ralph Waldo Emerson, and especially in the poetry of Walt Whitman. Plays written around the theme of the revolt of the masses against the classes were also popular, especially R. M. Bird's *The Gladiator*, and R. T. Conrad's *Jack Cade*.

<sup>8</sup> See R. W. Emerson's "New England Reformers," in *Complete Works*, III, 237-370.

Lloyd Garrison. Optimistic attempts were made to organize communistic colonies in various parts of the United States, in accordance with the utopian socialist ideals of England and France. Robert Owen came to America and founded a colony at New Harmony, Indiana, where labor and property were to be in common. The New England Transcendentalists set up their coöperative Society at Brook Farm. More than thirty such communities and "phalansteries"<sup>9</sup> were established. As Emerson said: "Not a man you meet but has a draft of a new community in his pocket." The American mind was being liberated from time-honored traditions, and in the process many ridiculous "isms" and quack panaceas appeared. As James Russell Lowell said: "Everybody had a mission to attend to everybody else's business. No brain but had its private maggot."<sup>10</sup> Foreign revolutionists, who were coming to America in large numbers when the revolutionary efforts in Europe proved unsuccessful, brought many new doctrines that added to the ferment.

The abolition of religious qualifications for voting and the separation of church and state were also completed during this period.<sup>11</sup> Almost all of the original states imposed a religious test of some sort, and a majority excluded Roman Catholics from active participation in public affairs. These restrictions were early attacked, and the idea gained ground that religious belief and political rights should not be connected by law. Jefferson had urged<sup>12</sup> that the right of conscience was one of the natural rights which men did not give up when they formed the social compact, and that the government had no jurisdiction in that field. He even pointed out the advantages of diversity of beliefs. Madison had argued<sup>13</sup> also that freedom of religion was a right reserved in the social contract, and that civil magistrates should not act as judges in matters of religious opinion. The tendency of the times, both in its emphasis on individual freedom, and in the multiplication of sects, was favorable to toleration. With the abolition of religious tests for voting, the support of religion by public taxation disappeared in those states that had inherited religious establishments from the colonial period. By 1833 the separation of church and

<sup>9</sup> Based upon the "phalanges" of Charles Fourier. See his *Nouveau monde industriel et sociétaire* (1829).

<sup>10</sup> In his *Essay on Thoreau* (1871).

<sup>11</sup> P. Schaff, *Church and State in the United States* (1888).

<sup>12</sup> *Notes on Virginia*, III, 261-266.

<sup>13</sup> *Works*, I, 162-169.

state, which has become a characteristic feature of American institutions, was completed.

The democratic tendencies of the time influenced the rigid theological beliefs of the earlier period. Unitarianism was organized in New England in 1815 under the leadership of Channing, in opposition to the doctrine of predestination and total depravity of the somber Calvinistic teachings. This movement reached its loftiest expression in the "transcendentalism" of Emerson, a combination of the spiritual zeal of the Puritan with an optimistic individualism that emphasized the freedom of the human spirit and the infinite possibility of human development. The Quakers were split by the more liberal teachings of Elias Hicks. Universalism had its beginnings in this period; and in the West the Methodists, Baptists, and similar evangelical sects experienced rapid growth. Foreign immigrants introduced many of the sects that had their origin in the Anabaptist movement in Germany. Religious beliefs became more individualistic, and religious organizations became more democratic. These changes gave a further impetus to the popular trend in government.

The widening of the suffrage was accompanied by a demand that more officials of government should be chosen by direct election. In the national government, presidential electors, formerly chosen by the state legislatures, were made popularly elective. In the states, many officials, formerly appointed or chosen indirectly, were placed under direct popular control. The judiciary in particular, the chief stronghold of the conservative classes, was subjected to bitter attack, and in many of the states the tenure of the judges was shortened and provision was made for the selection of judges by direct popular vote. By these changes the new democracy was able to control all departments of government in the states. The idea that changes in the fundamental law should receive popular approval also made rapid headway, and by 1830 the practice of submitting constitutions and constitutional amendments to the direct vote of the people had become general in the states. Except in the South, which was taking a reactionary attitude on slavery, the new liberal ideas were generally accepted.

The democratic changes in government were based in general on the political philosophy of the earlier period. They put into practice the ideas which Jefferson had held in theory, but which he had not put into practice. The mass of the people still thought in terms of natural rights, social contract, and popular sovereignty;

and treatises elaborating those doctrines were widely read.<sup>14</sup> There were, however, certain modifications being made in the earlier doctrines, and among the ablest thinkers there was even a denial of their fundamental premises. In the earlier period the compact was viewed as a "governmental compact," the parties to which were the people and the rulers. The government was thus an equal party to the agreement. The later thinkers repudiated any contract with the government. They held that the agreement was a "political compact," one among the individuals who composed the state only, and that the government was the mere agent of the people.<sup>15</sup> In this form the social contract theory took a more democratic form and justified a legal and more frequent change in governmental organization.

The attack on the social contract basis of the state came from several sources. Justice Story<sup>16</sup> had some doubts about the validity of the contract basis for the state and held that the doctrine "requires many limitations and qualifications when applied to the actual conditions of nations, even of those which are most free in their organization. Every state, however organized, embraces many persons in it who have never assented to its form of government, and many who are incapable of such assent, and yet who are held bound by its fundamental institutions and laws."<sup>17</sup> The historical and evolutionary point of view was making rapid progress, and this intellectual attitude led to the idea of the state as an organism, as the crystallization of the national spirit. It viewed the state as natural, not artificial, and government as a necessary and desirable condition for human existence. This point of view appeared in the writings of Calhoun<sup>18</sup> and Francis Lieber.<sup>19</sup>

## 2. GROWTH OF PARTIES AND PARTY ORGANIZATION

After the contest of personal leaders in 1824, the various Republican elements began to separate into two opposing groups on the basis of principles and public policies, especially on the issues

<sup>14</sup> N. Chipman, *Principles of Politics* (reprinted in 1833); F. Grimke, *Considerations upon the Nature and Tendency of Free Institutions* (1848).

<sup>15</sup> This was the doctrine of Rousseau, in contrast to the earlier theory of Locke.

<sup>16</sup> *Commentaries on the Constitution*, Sec. 327 (1833).

<sup>17</sup> Note the attack on the social contract theory in England by Hume in his *Political Discourses* (1752).

<sup>18</sup> See below, Sec. 5.

<sup>19</sup> See below, Chapter IX, Sec. 3.

of the bank, the tariff, and internal improvements. The banking interest desired a strong national banking institution, with national regulation of the currency. The commercial interest desired good roads, improvements in rivers and harbors, and easy communication among the states. The new manufacturing interest desired protection for manufactures. Those who favored action by the national government in support of these public measures, and who believed that the Constitution conferred upon it the necessary powers, became National Republicans, under the leadership of Clay and Adams. In 1831 a convention of this party adopted a series of resolutions favoring adequate protection to American industry, a uniform system of internal improvements by the general government, and the decision of constitutional questions by the Supreme Court. It also supported the Senate against the executive, and denounced the "indiscriminate removal of public officers for the mere difference of opinion as a gross abuse of power, corrupting to the morals and dangerous to the liberties of the country." Those who were interested chiefly in local government, who leaned toward strict construction, who thought more of popular control and less of national power, and who were opposed to chartered monopolies were called Jacksonian Democrats, and claimed to be the only "true-blue Republicans." As the party of the plain people, this group was not ashamed of the name *Democrat*. The term that had been applied to Jefferson's followers in derision they adopted as a decoration of honor.

The campaign of 1828 was largely a personal contest between a party of "Jackson men" and a party of "Adams men." The "Jackson men" secured control of the government, but among them was serious disagreement upon measures and policies. The party was not yet organized on a national scale. Since Jefferson, no President had been a party leader, and political party lines had been replaced by factional divisions growing out of the rivalries of various leaders and sections. Jackson's message to Congress gave no party program, but his personal leadership, exercised through appointments and through the veto, soon gathered a strong following around him, and cemented in opposition a group opposed to the political leadership of the President. Not until Clay re-entered the Senate in 1831 did the various elements of opposition combine under his leadership into a definite party. Jackson avoided a definite stand on constitutional questions and on the tariff, although he definitely opposed the national bank and the expendi-



ture of national funds for internal improvements. His party opposed monopoly movements and sympathized with the growing democratic sentiment, but was held together largely by personal allegiance to the President. The West in particular admired the self-made man and was ready to follow its hero with an enthusiasm more responsive to personality than to political programs. This group claimed to be the direct successor of the Republican party of Jefferson. For a time it retained the name *Republican*, but it soon came to be known as the Democratic party. The Jacksonian Democrats denounced their opponents as Federalists and stood forward as the champions of the common people. They insisted that the people should not be put in the power of monopolies or corporations through a system of vested rights or by irrepealable charters. In their platform of 1840 they asserted strict construction, opposed internal improvements, the tariff, and the national bank, and asserted the right of the states to control their own domestic institutions. They insisted that "all efforts made by Abolitionists or others to interfere with questions of slavery . . . are calculated to lead to the most alarming and dangerous consequences." They reasserted the principles of the Declaration of Independence and favored easy naturalization of foreigners as in harmony with these principles. On the question of territorial expansion, the Democrats favored the "reoccupation of Oregon and the reannexation of Texas."

The opposition to Jackson also claimed to be the true Jeffersonian Republican party, but in broadening out to include the various elements of opposition, it finally abandoned that name and took the good old Revolutionary party name of Whig. Its members announced themselves as the true successors of the men of '76. They would stand as their sires stood, in stout opposition to executive usurpation, whether on the part of King George in 1776 or of "King Andrew" in 1834. To them Jackson's defiance of the Supreme Court, his disregard of the rights of the Senate, his high-handed use of the veto, and his summary political removals were monarchical usurpations. The Whig party was a coalition of the National Republicans, or Adams and Clay men, with the Anti-Masons, Conservatives, and Nullifiers. They claimed to represent the true Jeffersonian principle of the maintenance of constitutional checks and balances of power against the growing usurpation of the executive. They favored legislative supremacy rather than one-man power. They were never a party of harmonious purpose,

being composed of elements too diverse for organic unity. They were, in fact, a party of opposition. Their only avowed principles were their advocacy of the "American system," inherited from the National Republicans. In 1844 the following brief plank summarized the party principles: "A well-regulated currency; a tariff for revenue to defray the necessary expenses of the government, and discriminating with special reference to the domestic labor of the country; the distribution of the proceeds of the public lands; a single term for the Presidency; a reform of executive usurpations; an administration of practical efficiency, controlled by a well-regulated and wise economy."

Both Whigs and Democrats were really new parties, although the Democrats were successful in securing possession of the Jeffersonian tradition. When Jackson's personality disappeared as an issue, as economic questions diminished in importance, and as the slavery question rose to prominence, the Whigs were even less able to act unitedly. The Northern and Southern wings could not act together. The Whigs included strong pro-slavery men in the South, radical anti-slavery men in the North, and a large body of Northern men who were opposed to agitation on the subject and wished to evade it entirely. The "Conscience Whigs," the "Cotton Whigs" and the "Silver Grays" could not support the same candidates and the same platforms. The party was finally destroyed by the slavery issue. As was said: "The Whig party died of an attempt to swallow the Fugitive Slave Law."

The rise of the Anti-Masonic party<sup>20</sup> (1828-1832) was a new kind of party in the United States. It grew out of opposition to the Masonic fraternity, whose members were accused of placing their secret obligations above the obligations of citizenship. It had the "unique distinction of being the only party in American political history not based on some theory of constitutional construction or on some governmental policy."<sup>21</sup> It showed that the advocates of a single and special proposal, with no primary interests in the problems of national government, might form a party organization and force special issues to a public hearing. It was soon followed by the Liberty party<sup>22</sup> (1840), favoring abolition. This was composed of men who believed in the formation of a party to promote abolitionism and to keep clear of other causes.

<sup>20</sup> C. McCarthy, *The Anti-Masonic Party* (1902).

<sup>21</sup> J. B. McMaster, *History of the United States*, V, 114-120.

<sup>22</sup> T. G. Smith, *Liberty and Free Soil Parties* (1897).

It aimed to be a national, not a sectional party, and argued for equality of human rights as in harmony with the spirit of American liberty and the "true spirit of the Constitution." Thus was begun the formation of minor third parties which have played a considerable part in American politics.

During the period of Republican supremacy the most noteworthy institution in Congress was the extra-constitutional party organization called the caucus. Through it the discordant elements of the party were reconciled and made to work together. It controlled national policy and selected candidates for the Presidency. As long as Jefferson was President he was the unquestioned leader of his party. Under Madison and Monroe, leadership fell into the hands of a group in Congress itself. After the War of 1812 a new generation of leaders, the new Republicans, came into power. Republican in name, they had little sympathy with the initial policy of the party. They chose Henry Clay as Speaker and began the enormous development of the powers of that office. Leadership became the prerogative of a group of members in the House of Representatives, and personal rivalries among individual leaders played a large part in politics. In the earlier period, *party* meant a group of leaders. It was based upon a restricted electorate and upon a general lack of interest on the part of the mass of the population.

With the gradual widening of the electorate a different conception of party arose. Between 1820 and 1840 the population of the nation nearly doubled. Between 1800 and 1830 twelve new states entered the Union; between 1816 and 1830 ten states either created new constitutions or made over old ones. After 1817 no incoming state imposed property or tax-paying qualifications for voting, and some of the older states, for example Massachusetts in 1821, abolished existing property qualifications. All of the Western states, save Mississippi, entered the Union with manhood suffrage. It was necessary for the parties to organize the new voters. They, in turn, demanded a broader base for the nomination of office-holders, and believed that the selection should be made by those not holding office. The congressional caucus was bitterly denounced. It was attacked as a "new, extraordinary, self-created, central power, stronger than the power of the Constitution, which has risen up at the seat of government; a power which has assumed the direction and control of the fundamental provisions of the Constitution, relative to the election of the Presi-

dent.”<sup>23</sup> It was urged that the “party of leaders” should be replaced by a “party of voters.” On the other hand, the old leaders insisted that the weakening of the caucus was a question “touching the dismemberment and preservation of the party.”

The breakdown of the caucus system in 1824 gave free rein to the rivalries of a group of leaders, each of which attempted to build up his own coterie of followers. Nominations were made by state legislatures and by groups of citizens, but no organization existed which could bring a clear-cut expression of public opinion at the polls. The most considerable organization was that of Jackson, and his popular appeal gave him a plurality vote in the election; but the electoral votes were so divided as to place the decision in the House of Representatives, which chose John Quincy Adams. He was the least “party-minded” of the candidates and did little during his administration to bring order out of the party chaos. National thought was slow in formation because of the extent of the country and the difficulties of travel and communication. Except for the common government at Washington, physical bonds of national interest were few. For the citizens in general, especially in the newer states, the symbol of national authority was the Presidency. Few members of the House of Representatives were known outside their own sections. The Senate was the arena to which states sent their champions, but the Presidency was the goal at which the national leaders aimed.

Party organization gradually responded to the growing electorate, to the demand for popular participation in party counsels, and to the increasing importance of the Presidency. Groups of men began to organize the voters for the purpose of carrying elections. Party machines arose, functioning outside the government of the states and of the nation. The most important effect of the conversion of the Presidency into a representative institution was the creation of the convention system. The idea of a convention to nominate candidates for office was an old one. As early as 1792 it was proposed in Pennsylvania that a convention be held from all parts of the state to “fix on suitable candidates to be recommended to the choice of the citizens.”<sup>24</sup> This plan was opposed because of popular jealousy of any mediation in the election of public officials. Republican leaders, in particular, opposed such proposals, urging that “every man should be free to frame his

<sup>23</sup> C. S. Thompson, *Rise and Fall of the Congressional Caucus* (1902), p. 43.

<sup>24</sup> *The American Museum*, Philadelphia, August, 1792.

own ticket." Practical experience showed, however, that some machinery was necessary to concentrate votes in the interest of the party. In New York State, where factional contests were especially bitter, party organization attained greatest strength. In 1813 Tammany Hall proposed that a state convention be called for the purpose of nominating the governor. The movement failed, but the tendency on the part of opposition movements, or new parties, who could not hope to control the legislative caucus, looked increasingly in the direction of a convention. The first national convention for the purpose of nominating a candidate for President was held by the Anti-Masonic party in 1831. The National Republicans held a national convention shortly afterwards.

Popular dislike of party machinery was deeply rooted among the followers of Jackson. They desired a constitutional amendment providing for the direct popular election of the President. The necessity of concentrating the Democratic vote, however, became manifest, and the convention system appeared to be the only practicable method. Finally Jackson gave his approval to the movement, and the system of national conventions was adopted by all parties. Some marks of the resistance of the Democratic party to the system of national control over party organization survive to this day. The rule which requires a two-thirds majority to nominate was a precaution taken by state party organizations against submergence of their wishes. The subsequent adoption of the unit rule, by which a majority of each delegation was allowed to cast the vote of the state, represented a similar point of view. It required the full pressure of Jackson's authority and an extensive use of the federal patronage to make the party organizations in some of the states submit to the national convention system.

Declarations of party principles naturally accompanied the nomination of party candidates, and so the party platform came into existence. The germ of this idea may be traced far back. In 1800 the Republican congressional caucus set forth the principles represented by Jefferson's candidacy. In 1812 the New York Legislative caucus set forth its opposition to Madison in a series of resolutions. With the rise of the new democracy, adoption of resolutions at meetings and conventions became a regular practice. In 1840 the Democratic party adopted its first formal national platform. The remnants of the Whig party, with their prepossessions in favor of parliamentary control, stated that experience

had demonstrated that platforms adopted by the partisan conventions of the country had the effect to mislead and deceive the people, and at the same time widen the political divisions of the country by the creation and encouragement of geographical and sectional partisan parties." Nevertheless, public opinion demanded a statement of party principles, and the politicians had to comply.

The effect of the convention system was finally to destroy the constitutional method of selecting the President. As Senator Benton, who was a leader in the new movement, stated: "The election of the President and the Vice-President of the United States had passed, not only from the college of electors to which the Constitution confided it, and from the people to which the practice under the Constitution gave it, and from the House of Representatives which the Constitution provided as final arbiter, but has gone to an anomalous, irresponsible body, unknown to law or Constitution, unknown to the early ages of our government."<sup>25</sup> Benton's remedy was direct popular election of the President. Calhoun, however, clearly discerned the impossibility of the people as a whole making a real choice. He pointed out that real selection would be transferred to a small group of managers and that parties will rule because associated effort is more powerful than individual action.<sup>26</sup> He held that the natural tendency in a country governed by majority rule is the formation of parties, in each of which power is concentrated in a small group, and that party organization and discipline naturally results from the desire of the parties for the honors and emoluments of government.

As a result of the new attitude toward the Presidency and the new method of selection, American government definitely broke from the line of development followed in England. In that country, the democratic movement made the executive subservient to the national will through the agency of Parliament. In America, democratic progress found the executive its most convenient instrument and made the President the organ of the will of the nation. In the English parliamentary type of government it became a settled principle that party control of the House of Commons carried with it the custody of executive prerogative. In the American presidential type of government, the executive is independent of Congress, chooses his Cabinet to suit himself, and may work at cross purposes with Congress. Party organization grew up to act as a coördinating force in the elaborate system of checks and

<sup>25</sup> *Thirty Years' View* (1854), I, 49.    <sup>26</sup> *Works*, I, 40-41.



balances in the United States. Largely through the extra-legal means supplied by the party is the will of the nation expressed and administered. Political parties, with their conventions, committees, and bosses, became an important part of the actual government.

### 3. INCREASE IN EXECUTIVE POWER

In the latter part of the Republican period Congress acquired great weight in the government. The Congressional caucus named the President and gave a parliamentary origin to the administration. Congress assumed large powers, especially in promoting internal improvements, in spite of the arguments of Jefferson, Madison, and Monroe that constitutional amendments were needed for the exercise of such powers. Furious contests took place in Congress over the tariff, internal improvements, and slavery, without affecting the alignment of parties in the election of the President. The dignity and influence of Congress were strengthened by the presence of an able group of statesmen, such as Clay, Webster, and Calhoun. The people naturally fell into the habit of looking to Congress for decisions on questions of national policy. The Presidency was passed from one member of the Virginia dynasty to another, and the Cabinet remained without much change, each new President retaining his old associates. The President was becoming the head of a permanent bureaucracy, rather than the leader of a national party.

With the election of Jackson the old relations between President and Congress were destroyed. Jackson's election was made possible by a great increase in the size of the electorate. In spite of the opposition of John Adams, Madison, Monroe, and Marshall, who stood for the old order of control by a "natural aristocracy," property qualifications for voting were disappearing. Maryland in 1810, Connecticut in 1818, New York in 1821, and Massachusetts in 1822 abolished property qualifications. Elected by a large majority, Jackson considered that he represented the will of the people more accurately than Congress, many of whose leaders were opposed to him; and he was determined to restore the prestige of the office which he held.<sup>27</sup> He believed that he represented the common people against the legislative aristocracy of Congress, and the people regarded him as their champion and were willing to

<sup>27</sup> For Jackson's conception of the principles of executive government, see Richardson, *Messages and Papers of the Presidents*, III, 69-93.

trust him with large powers. The executive, shorn of power since the days of the American Revolution, was again strong enough to assert itself in the affairs of state.<sup>28</sup> This was accomplished through Jackson's policy of rotation in office, through his veto power, and through his control over the military forces.

The doctrine of rotation in office was not new. It had frequently been advocated as a remedy for political corruption, especially during the Commonwealth period in England. Harrington in his *Oceana* had suggested that every magistrate and representative that held office should thereafter be excluded for a period equal to his term of service. Burgh, whose *Political Disquisitions* was a widely read textbook of reform in the latter part of the eighteenth century, had argued vigorously for the benefits of short terms and frequent rotation. Many of the early state constitutions enunciated the principle in their bills of rights. John Adams,<sup>29</sup> in his earlier and more liberal period, had favored the principle, "if the Society has a sufficient number of suitable characters to supply the great number of vacancies." Jefferson believed that rotation in office would prevent the formation of a permanent bureaucracy, and had to some extent applied his ideas in practice when he became President. John Taylor<sup>30</sup> asserted that more talent is lost by long continuance in office than by the system of rotation. He held that ability was stimulated by the prospect of employment and "smothered by the monopoly of experience." On the floor of the Senate it was predicted that opportunities would increase until "it shall become a matter of course that each individual shall strive to qualify himself to discharge the duties of an office to which he may be called."<sup>31</sup>

What Jefferson held rather as an abstract principle and had exercised sparingly, Jackson decided to practise vigorously. Reform was the keynote of the new administration, and the civil service was unflinchingly renovated. Removal from office for political reasons, a practice which was begun in New York state politics, and which had been imitated by other Northern states, became a national policy. The principle of rotation in office rested on the assumption that all men are equally fitted to hold office

<sup>28</sup> F. N. Thorpe, ed., *The Statesmanship of Andrew Jackson as Told in His Writings and Speeches* (1909).

<sup>29</sup> *Thoughts on Government* (1776).

<sup>30</sup> In his *Inquiry into the Principles and Policy of the Government of the United States* (1814).

<sup>31</sup> *Congressional Globe*, 23rd Congress, 1st sess., I, 273.

and that any one can safely be entrusted with official power. It was opposed to the doctrine that office should be held because of special fitness or training, and that long tenure in office gave a vested property right to the place. In Jackson's first message to Congress he stated that "there are, perhaps, few men who can for any great length of time enjoy office and power without being more or less under the influence of feelings unfavorable to the discharge of their duties." He argued that "the duties of all public officers are, or at least admit of being made, so plain and simple that men of intelligence may readily qualify themselves for their performance," and that it was desirable, "by promoting that rotation which constitutes a leading principle in the republican creed, to give healthful action to the system." The Jacksonian democracy attacked long tenure in office in the same spirit that monarchy and aristocratic privilege had earlier been attacked, and opened the way for the democratization of political institutions.<sup>32</sup>

The effect of this system was to align the quarreling factions into definite parties, since only by membership in the party in power could one hope to hold office. It also increased the importance of the executive, whose appointing power enabled him to define party issues through his control over the patronage. The President was able to force issues on Congress and to make his will prevail over its opposition. Referring to the declining prestige of the Senate, Henry Clay said in 1837:<sup>33</sup> "The Senate has no army, no navy, no patronage, no lucrative offices, nor glittering honors to bestow. Around us there is no swarm of greedy expectants rendering us homage, anticipating our wishes, and ready to execute our commands. How is it with the President? Is he powerless? He is felt from one extremity to the other of the republic. By means of principles which he has introduced, and innovations which he has made in our institutions, alas! but too much countenanced by Congress and a confiding people, he exercises uncontrolled the power of the state. In one hand he holds the purse and in the other brandishes the sword of the country. Myriads of dependents and partisans scattered over the land are ever ready to sing hosannahs to him

<sup>32</sup> For a contemporary description of the workings of the "spoils system," see T. L. McKenney, *Memoirs, Official and Personal* (1846), 1, 200-263.

<sup>33</sup> In the debate on the final passage of the resolutions expunging the Senate's censure of Jackson for removing the government deposits from the National Bank.

and to laud him to the skies, whatever he does. He has swept over the government like a tropical tornado."

The framers of the Constitution, familiar with the exercise of a veto power by the British government in colonial relations, and frightened by the excesses of legislatures under the Confederation, deliberately made the President a party to legislative proceedings through his power of veto. It was expected that all laws should pass in review before him and be subject to his revision and correction. Hamilton defended this power in *The Federalist*,<sup>34</sup> against the protests of many who feared a revival of royal prerogative, on the ground that it was necessary to protect the executive against encroachments by the other departments of government, and that the veto would be used sparingly. Until Jackson's administration the veto power was used cautiously, rather as an expression of advice than of opposition. Madison and Monroe used the veto to express their dissent from the broad doctrines of national power which Congress, under the leadership of Clay and Calhoun, assumed toward internal improvements, but there was no serious executive resistance to the general policies of Congress. Jackson, however, used the veto vigorously to assert executive authority and to bend Congress to his will.

The Congressional leaders, accustomed to directing national policy, attacked bitterly this assumption of power and this new interpretation of executive authority. Clay asserted that "it is a feature of our government borrowed from a prerogative of the British King," and that "the veto is hardly reconcilable with the genius of representative government." He feared that "the government will be turned into an elective monarchy." Webster asserted that "the President carries on the government, all the rest are subcontractors." He said that "the contest for ages has been to rescue liberty from the grasp of executive power"<sup>35</sup> and that the executive had always been regarded "as a lion which must be caged." Calhoun called Jackson's claim to be the direct representative of the American people "effrontery." He considered Congress "the great central point where all power must receive its sanction and direction." In the Senate it was urged that "the executive power which represents the common force of society is, in every just theory, and in the nature of things, inferior to the legislative power, which is the representative of the common intel-

<sup>34</sup> No. 73.

<sup>35</sup> *Congressional Debates*, X, Pt. II, 1681.

ligence and the common will, and that, too, precisely in the degree to which brute force is inferior to reason.”<sup>86</sup> The press also was filled with denunciations of the veto power. An editorial in *Niles's Register* stated that “no King of England has dared a practical use of the veto for about two hundred years, or more, and Louis Philippe would hardly retain his throne three days were he to veto a deliberate act of the two French Chambers.”

The Democratic party supported the principle of veto power, and made it a part of its political platform. The Whigs made “a reform of executive usurpations” a part of their policy. The Whig party was organized in opposition to what its leaders considered the abuse of executive powers. The essence of its doctrine was that the legislature represents the people most closely and that the executive should be constantly under suspicion and distrust. In 1842 Clay proposed constitutional amendments that would enable Congress by a majority vote to pass a bill over the President's veto. He argued that the veto power practically gave the President the right to initiate laws and would ultimately make him the ruler of the nation. Nevertheless, the Jacksonian interpretation of the nature of the veto survived, and opposition to it finally disappeared. With the democratic development of the country, the President was considered to represent the whole nation, chosen by the direct mandate of the people, and to protect their interests more adequately than the sectional representatives who composed Congress. As Levi Woodbury, a member of Jackson's Cabinet, said: “The veto power is the people's tribunative prerogative speaking again through the executive.”<sup>87</sup>

An important result of this point of view was to confer a similar power upon the governors of the states. Only two of the original state constitutions made such provision. In 1840 only nine of the twenty-six states gave the governor a veto power such as the President possessed. At present almost all the states confer such authority. The tendency in American constitutional development favored the existence of such executive power and gave a stimulus to its more frequent exercise. In other ways an expansion of executive power was already noticeable in the states. Constitutional amendments took the selection of the governor away from the state legislatures and placed his choice in the direct vote of the people. His term of office was lengthened, and his power of

<sup>86</sup> *Congressional Debates*, XIII, Pt. I, 469.

<sup>87</sup> In a speech at Faneuil Hall, Oct. 19, 1841.

appointment was materially increased. The change in attitude toward the governor was well expressed by one of the delegates to the New York convention of 1821 as follows: "An erroneous idea seems to have prevailed in relation to the powers and origin of the governor. Who is he? And by whom is he appointed? Does he derive his authority from the King of Great Britain? Is he an usurper? If so, let us unite to depose him. But, sir, he is the man of the people—elected by their suffrages and identified with their interests. He is a watchful sentinel to guard us from evil and a zealous friend to admonish us of error."

The increased importance of the presidential office, caused by the democratic movement, made the election of the President the center of political interest. No party could accomplish its purposes unless it controlled the Presidency. The doctrine of parliamentary control held by the Whigs could not maintain itself against the new doctrine of executive leadership. In his message of 1848 President Polk asserted: "The people, by the Constitution, have commanded the President, as much as they have commanded the legislative branch of the government, to execute their will . . . The President represents in the executive department the whole people of the United States, as each member of the legislative department represents portions of them." As a result, interest in Congressional elections shifted to interest in presidential elections, and the power and prestige of Congress declined.

In the beginning of our national history, the executive department was feared, and confidence was placed in representative legislatures. When the first state constitutions were formed, overwhelming predominance was given to the legislative department. The framers of the Constitution expected that the House of Representatives, the only organ of the original system to be chosen by direct popular vote, would have a distinguished position, like that of the British House of Commons. In the early part of our history it maintained its ascendancy. It was the field in which political ability could attain distinction; its floor was the scene of able debates; it made and controlled Presidents. Calhoun remarked that the House was originally "a much more influential body than the Senate."<sup>38</sup> T. H. Benton stated that "for the first thirty years it was the controlling branch of the government, and the one on whose action the public eye was fixed."<sup>39</sup> John Quincy Adams thought it not undignified to take a seat in the House after he

<sup>38</sup> *Works*, I, 341.

<sup>39</sup> *Thirty Years' View*, I, 208.



had occupied the President's chair. After Jackson's time, however, the House steadily lost in prestige as compared with the Senate. Its decadence soon made it notorious. The President, however, overshadowed both. Hamilton's prophecy that the time will "assuredly come when every vital question of the state will be merged in the question, 'who shall be the next President?'"<sup>40</sup> became true when the selection of the President by a Congressional caucus and an Electoral College was replaced by that of a national nominating convention and a broad-based popular vote.

#### 4. DECLINE IN IMPORTANCE OF THE SUPREME COURT

With the accession of the Democratic party to power, the attack on the large authority and the nationalistic attitude of the Supreme Court was renewed, both in Congress and in the states.<sup>41</sup> Everything of an aristocratic nature was disliked by the new democracy, and the life tenure of Supreme Court judges and the large powers exercised by the judiciary were heartily deplored. Van Buren, one of the leaders of the new party, stated that he was "exasperated at the guarded and sly manner in which they put forth the doctrines of the old Federal party without assuming the responsibility of affirming them."<sup>42</sup> In a speech in the Senate in 1826 he asserted that "there exists not upon this earth, and there never did exist, a judicial tribunal clothed with powers so various and so important as the Supreme Court."<sup>43</sup> He objected especially to its assumption of the functions of an umpire between the states and the nation. Jackson felt himself the chosen organ of "the people's will" and regarded no interpretation of the Constitution as binding except his own. Even John Marshall made concessions to the spirit of the times, and in a series of decisions<sup>44</sup> modified the operation of previous decisions in a way more favorable to the states. When Jackson refused to execute his decision against Georgia,<sup>45</sup> Marshall wrote: "I yield slowly and reluctantly to the convictions that our Constitution cannot last. Opinions in the South are incompatible with a united government even among

<sup>40</sup> J. C. Hamilton, *History of the Republic of the United States* (4th ed., 1879), III, 335, 346.

<sup>41</sup> For controversies with the states in their efforts to resist federal judicial power, see C. G. Haines, *Conflict over Judicial Powers*, pp. 48-53, 84-95.

<sup>42</sup> Van Buren *Political Parties*, p. 362.

<sup>43</sup> Elliotts' *Debates*, IV, 485.

<sup>44</sup> See *Providence Bank v. Billings* (1830), 4 *Peters*, 514; *Satterlee v. Matthewson* (1829), 2 *Peters*, 380; *Barron v. Baltimore* (1833), 7 *Peters*, 243.

<sup>45</sup> In *Worcester v. Georgia* (1832), 6 *Peters*, 515.

ourselves. The Union has been prolonged this far by miracles." To Story he wrote: "To men who think as you and I do, the present is gloomy enough, and the future presents no cheering prospect."

In the brief period of twenty-seven months following the death of John Marshall the Supreme Court received a new Chief Justice, Roger Taney, and five new Associate Justices. The effect of this change in personnel soon became evident. Three decisions quickly sustained state laws which in earlier arguments Marshall had considered unconstitutional. The first<sup>46</sup> recognized "the complete, unqualified, and exclusive" power of the state to regulate its "internal police" and gave it the right of way over the "commerce clause." The second<sup>47</sup> practically nullified the constitutional prohibition against "bills of credit" issued by the states. The third<sup>48</sup> curtailed the operation of the "obligation of contracts" clause. In 1847, in a series of warmly contested cases<sup>49</sup> the court interpreted the commerce clause favorably to the states. In *Kentucky v. Dennison*<sup>50</sup> the court held that though the Constitution made it a duty of a state to surrender to another state a fugitive from justice from that state, there was no constitutional means by which the federal government could compel the performance of that duty. In all these cases the states were favored at the expense of the federal government. Justice Story,<sup>51</sup> who tried to continue the national tradition of Marshall, wished to resign from a tribunal whose days of influence he thought gone by, and wrote that "there will not, I fear, even in our day, be any case in which a law of a state or of Congress will be declared unconstitutional, for the old constitutional doctrines are fast fading away."<sup>52</sup> Justice Henry Baldwin wrote that "the history and spirit of the times admonish us that new versions of the Constitution will be promulgated to meet the varying course of political events or aspirations of power."<sup>53</sup>

The successful resistance of Georgia, encouraged by Jackson, to the order of the Supreme Court in the case of the Creek In-

<sup>46</sup> *City of New York v. Miln*, 11 *Peters*, 102.

<sup>47</sup> *Briscoe v. Bank of Kentucky*, 11 *Peters*, 257.

<sup>48</sup> *Charles River Bridge Co. v. Warren Bridge Co.*, 11 *Peters*, 420.

<sup>49</sup> *The License Cases*, 5 *Howard*, 504.

<sup>50</sup> 24 *Howard*, 66.

<sup>51</sup> See his *Commentaries on the Constitution of the United States* (1833), dedicated to Marshall, and based upon *The Federalist* and the decisions of Marshall.

<sup>52</sup> *Life and Letters of Joseph Story*, II, 272.

<sup>53</sup> *General View of the Origin and Nature of the Constitution and Government of the United States* (1837).

dians, and the attitude of Jackson in vetoing the Act of Congress to recharter the National Bank began a new era in the history of the Supreme Court. Jackson held that the opinion of the court as to the constitutionality of the bank was not final. "The Congress, the executive, and the court," he said, "must each for itself be guided by its own opinion of the Constitution . . . The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges, and, on that point, the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning deserve."<sup>54</sup> Many questions formerly determined by the court were turned over to the political departments of the government, the doctrine of implied powers received a more restricted application, and the states were given a greater freedom from interference by the federal judiciary. The nationalistic policies of Hamilton and Marshall were reversed in favor of a return to the States' rights principles of Jefferson.

The appointment of Taney as Chief Justice by Jackson was intended to place at the head of the judiciary a justice who stood for a strict construction of the Constitution, for the rights of the states, and for a less degree of judicial interference in the public policies of the nation. In his earlier decisions Taney adhered strictly to the language of the Constitution, and used the principle of expediency to restrict the powers of the national government rather than to enlarge them. For twenty years conflict between the states and the national authority was avoided, mainly by allowing the states the fullest exercise of authority that the Constitution would permit. Taney even went so far as to assert that the rights of sovereignty and jurisdiction between states were not subjects of judicial cognizance and that the judgment of the Supreme Court could not be binding between the United States and the individual states. "Such questions," he held, "should be settled by the law-making and political departments of the government." It was the duty of the court "not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums."<sup>55</sup>

The success of the Jacksonian democracy gave that party con-

<sup>54</sup> *Senate Journal*, 22d Congress, 1st sess., pp. 438-439.

<sup>55</sup> *Luther v. Borden*, 7 *Howard*, 1.

trol in a majority of the commonwealths, as well as in the national government, and a corresponding change in attitude may be noted in the state courts. Judges, many of whom were made elective and hence more responsive to public opinion, were inclined to recognize the principle of legislative sovereignty, and to use sparingly the power to nullify acts of the state legislatures. The fact that from 1830 to 1860 few state laws were declared unconstitutional shows that the new democracy was not willing to tolerate any barrier to the enforcement of the rule of the people. Jacksonian judges from the agrarian states broke down the safeguards which Marshall had set up for the protection of property and permitted the states to exercise a considerable degree of sovereign power.

However, the radical impulse was soon spent. Taney was fundamentally a conservative; and while he regarded the Supreme Court rather as an umpire between two sovereignties than as an organ of the national government for a vigorous assertion of its powers, as Marshall had held, he was not disposed to disturb seriously the fundamentals of constitutional law. The important fact to be noted concerning the attitude of the Supreme Court during this period is that, though it threw its influence on the side of the states so far as a liberal interpretation of the powers reserved to them was concerned, it never intimated that the actual legal and political supremacy was not vested in the national government. The Supreme Court had no sympathy with the nullification and secession point of view. Besides, the development of railroads and the influx of European immigrants awakened the interest of the country in keeping intercourse among the states free from local control, and by 1851<sup>56</sup> the court had again accepted Marshall's principle of the exclusive control of Congress over interstate and foreign commerce. Economic conditions compelled the court to return to the national point of view on economic issues.

When the slavery issue became critical, the Supreme Court, under Taney, finally abandoned the Democratic principle of control of national policy by the political departments of the government, and attempted to settle the controversy by judicial decision. As early as 1848 it was suggested in Congress that the issues arising from the slavery controversy should be determined by the Supreme Court. At that time the Court, in accordance with its policy of avoiding political issues, took the position that it had no

<sup>56</sup>In the case of *Cooley v. the Board of Wardens of Philadelphia*, 12 Howard, 299.

jurisdiction. Finally, however, in the Dred Scott decision,<sup>57</sup> the Court was prevailed upon to enter the controversy. It declared the Missouri Compromise unconstitutional and held that Congress could not prohibit slavery within the territories. After this decision the two parties reversed their attitude toward the power of the court. The Democrats held that "whoever resists the final decisions of the highest judicial tribunal aims a deadly blow to our whole republican system of government."<sup>58</sup> Their opponents denounced the decision as having no more effect than a pro-slavery stump speech. This decision involved the federal judiciary in a series of controversies, and threw the slavery issue into the political arena in the debates between Douglas and Lincoln, in which the Dred Scott decision was one of the most important issues.

#### 5. POLITICO-ECONOMIC CONTROVERSIES

The period from 1830 to 1850 was marked by a series of economic developments which changed the nature of the country and had a marked effect upon political thought and upon governmental policies. The growth of population was rapid, partly because of a high birth rate, partly because of immigration, which increased rapidly after the War of 1812. The immigrants avoided the states in which slavery was the prevalent form of labor; hence they increased the voting strength of the sections opposed to slavery. The immigrants were rarely pioneers. They clustered mainly in the northern section of the Atlantic states and were absorbed by the rapid growth of manufactures. With the increasing numbers of immigrants, public opinion, which heartily favored immigration in 1815, began to change. By 1830 demands were heard for discrimination among the incoming multitude, partly because of the large number of diseased, pauper, and criminal classes coming from Europe. In 1824 New York State passed legislation intended to relieve it of the burden of caring for dependent immigrants, but this attempt was declared unconstitutional by the Supreme Court<sup>59</sup> on the ground that immigration was commerce and that the Constitution of the United States provided that Congress should have power "to regulate commerce with foreign nations."

<sup>57</sup> Dred Scott v. Sanford, 19 *Howard*, 393.

<sup>58</sup> Douglas, in his speech to the grand jury in Springfield, Illinois, published in the *New York Times*, June 23, 1857.

<sup>59</sup> *City of New York v. Miln*, 11 *Peters*, 103; *Passenger Cases*, 7 *Howard*, 572.

Congress took no action toward restriction of immigration during the first half of the century, in spite of the fact that opposition to immigration existed in some degree from the beginning of the government. The Federalists and their successors, the Whigs, dominated by aristocratic sympathies, were at various times opposed to unlimited admission of foreigners. Men of the old colonial stock viewed the more recent comers with alarm, and this point of view was repeated with each new generation. Franklin stated of the German immigrants, who early poured into Pennsylvania, that "not being used to liberty they know not how to make modest use of it." Washington doubted the advisability of immigration, except of skilled mechanics. He objected to giving places in the government to foreigners, with the exception of Lafayette. Under John Adams a residence of fourteen years was required as a prerequisite for naturalization. Madison favored immigration, but Jefferson expressed the wish for an ocean of fire to separate this country from Europe so that no more immigrants could come in. The Hartford Convention in 1812 proclaimed that "the stock population of these states is amply sufficient to render this nation in due time sufficiently great and powerful." By the thirties and forties immigration had risen to a considerable volume and consisted in large degree of persons of a different type and religion from those already in America. As a result nativistic sentiment was strengthened. The Irish caused special alarm. They were clannish, clung to the cities, and because of their interest in politics furnished excellent material for designing politicians. As they were generally Catholics, a solid Irish vote alarmed those who feared that the American doctrine of the separation of church and state might be broken down. They were accused of corrupting the ballot and trying to establish ecclesiastical supremacy in the Republic. Pauperism, intemperance, and illiteracy increased with the incoming foreigners. A committee in Boston in 1849 reported on the "wretched, dirty, and unhealthy condition of a great number of the dwelling houses occupied by the Irish population." Such conditions gave a great impetus to the movement for humanitarian reform that characterized the period. Many argued that immigrants should be denied the right to vote and hold office, but neither political party was willing to support this principle.

Finally the advocates of reform created a distinct organization, calling themselves Native Americans. Their strength was chiefly in the cities. In 1837 the Native American Association was formed,



demanding of Congress the repeal of the naturalization laws. Riots broke out in several cities, and in 1844 the question became a campaign issue, the Democratic party, to which most of the Irish belonged, espousing their cause and denouncing the spirit of persecution. Opposition persisted, however, and in 1850 the Order of the Star-Spangled Banner was formed, out of which grew the Know-Nothing<sup>60</sup> movement. This was a secret political organization with the same principles as those of the Native Americans, and drew its strength largely from the Whigs. It carried on a vigorous campaign of agitation and pamphleteering, secured control of the government in several states, and by 1856 appeared as a full-fledged national political organization. It combined solicitude for the permanence of religious liberty with opposition to the lower standards of living and the industrial competition of the incoming laborers. In a secret convention at Philadelphia in 1856, it adopted a platform containing, among other planks, the provisions that "Americans must rule America, and to this end native-born citizens should be selected for all federal, state, and municipal offices," and that "a continued residence of twenty-one years should be required for future citizenship." After the Revolution of 1848 in Germany there was a large immigration from that country, much of which was Protestant, and the Know-Nothing movement was soon eclipsed in the great questions connected with the issue of slavery and the permanence of the Union. The European peasants and workingmen, predisposed by temperament and by economic interests against slavery, swelled the numbers in America of those who opposed that institution. German immigrants in particular took an active part in preventing the spread of slavery. Seward congratulated Missouri upon its "onward striving, freedom loving German inhabitants," and declared that "Missouri must be Germanized in order to be free."

The economic development of the country was given a stimulus by a series of great inventions, which led to an industrial revolution similar to that through which England had already passed. Power machinery in industry came into use, especially in New England, where water power was abundant. Manufactures soon replaced commerce as the chief form of industry, and wealth was no longer confined to the seaports and to the commercial class. Factories and cities increased in number and in size, and agriculture

<sup>60</sup> So called because, when asked regarding the mysteries of their order, they were instructed to answer, "We know nothing."

declined in relative importance. The invention of the telegraph was scarcely less important than the railroads in bringing the various parts of the country into close business and social relations and in stimulating a common public opinion and a national spirit. Improvements in agricultural machinery revolutionized farming in the West and made that section a granary for many parts of Europe. The invention of the sewing machine revolutionized the clothing industry. A committee of inquiry appointed by the House of Commons in 1841 reported that "a majority of the really new inventions, that is, of new ideas altogether in the carrying out of a certain process by machinery, or in a new mode, have originated abroad, especially in America." From the beginning Congress made provision for the protection of inventors, and gradually it extended the period of protection of patent rights to a longer time than that granted by the patent laws of other countries. By these methods the enormous production of the factory system and its operation under skilled and centralized direction was made possible, and the basis was laid for the great issue between capital and labor after the Civil War.

Each of the great geographical sections, the Northeast, the South, and the West, had a dominant economic interest, and developed a scheme of political action to correspond with that interest. The Northern capitalists desired an immigration policy that would assure an abundance of cheap labor, a tariff policy that would protect manufactures, a sound monetary system, and federal aid to commerce and to internal improvements. They had a clear-cut program of federal legislation and favored a liberal construction of the Constitution by the federal courts. Daniel Webster was the spokesman of this group. He argued that laws that favored business also furnished employment to labor, and that the tariff benefited the farmer by furnishing a profitable market for his produce. In the earlier period, when commercial interests were dominant in New England, Webster had favored the policy of *laissez-faire* in opposition to Clay's American system of protection; but when the textile interests became paramount, Webster changed his position <sup>61</sup> and joined with Clay in extolling the principle of protection. He argued that the planters and farmers were local and sectional in outlook, but that the mercantile classes, whose affairs connected them with every section and with foreign nations, were a powerful bond of national cohesion.

<sup>61</sup> See his "Apology and Defense," in *Works*, V, 146, 240.

The Southern planters and the Western farmers had many interests in common. As producers of raw materials and purchasers of finished goods, they desired a low tariff. As borrowers, they favored an elastic currency and opposed the National Bank. They upheld the policy of *laissez-faire*, and denied the right of Congress to promote industries by special legislation. They were willing, however, to stretch the Constitution in permitting the states to manage banks, issue money, and modify the obligations of contracts. Calhoun was the spokesman of the Southern planters. He argued that the Federalists had diverted the government from its proper channel, and that it should be restored to its original purpose. He opposed the Bank, the protective tariff, and the large expenditures for internal improvements and for patronage.

The political theory of the Western farmers was stated by Andrew Johnson and by C. L. Vallandigham. They returned to Jefferson's belief in the value of a strong, middle-class, agricultural population and opposed the growth of aristocratic, industrial cities. They argued that the main contest was between capital and labor, between plutocracy and democracy; and that the government had fallen into the hands of the money class. They were willing to cooperate with the Southern planters, because they had noncommercial interests, and because the existence of slavery prevented a conflict between capital and labor in that section. On one important issue the West and the South disagreed. The Western farmers and the laborers in the East favored a liberal land policy. They wanted the public lands to be opened up on easy terms, and for years carried on a vigorous Homestead campaign. Abolitionists and humanitarians supported this point of view. It was opposed by the manufacturers, who feared the loss of their laborers, and by the planters, who feared the extension of territory occupied by free farmers, unless they could gain slave territory to the South.

The most important economic controversy in the politics of the period was that over the National Bank. To Jackson and his followers the Bank of the United States was a huge, privileged institution, exercising a sinister and undemocratic influence in politics. The frontier prejudice against corporations with large accumulation of capital and the Western desire for low interest rates and a cheap currency led to bitter opposition to the financial control exercised by the bank. Several states in the South and West, which opposed the control exercised by the National Bank over the state banks, attempted to tax the branches established within their

borders. From this they were debarred by adverse decisions<sup>62</sup> of the Supreme Court under Marshall. Opposition to the bank was largely the result of the opposition of States'-rights democracy to centralized privilege. In 1828 Senator Benton attacked the institution on the ground that its stockholders were profiting from government deposits. With this attack Jackson was in thorough sympathy. In his first message to Congress (1829) he questioned the constitutionality of the bank and the expediency of the law creating it, and declared that it had failed to establish a sound and uniform currency. In his second message (1830) he returned to the attack, and proposed a bank of deposit connected with the Treasury Department and managed by public officials. The Ways and Means Committee of the House made a report favorable to the bank, but that strengthened Jackson's belief that the bank was active in politics. In 1833 Jackson ordered the removal of public deposits from the National Bank and placed them in various state banks.<sup>63</sup> The controversy over the recharter of the bank spread to the country, and state legislatures passed resolutions for and against such action.

Under the leadership of Clay a bill for the extension of the bank's charter passed both houses of Congress (1832), but was vetoed by Jackson in the most vigorous veto message<sup>64</sup> written by an American President. Biddle, the president of the bank, wrote that it had all the fury of a chained panther biting the bars of his cage. Jackson accused the bank of being undemocratic and un-American,<sup>65</sup> of fostering sectional jealousies, of interfering with the state banks, of enriching its stockholders from public funds, and of being actively and corruptly engaged in politics. He doubted the constitutionality of the law creating the bank, and was convinced of its inexpediency. He stated that the President had as much right to decide what agencies were "necessary and proper" as Congress or the Supreme Court. Jackson's message was an appeal to national spirit against foreigners, to the West against the

<sup>62</sup> *McCulloch v. Maryland* (1819), 4 *Wheaton*, 316; *Osborn v. U. S. Bank* (1824), 9 *Wheaton*, 738.

<sup>63</sup> See Jackson's Paper on the Bank Controversy, read to the Cabinet on Sept. 18, 1833, in *Niles's Register*, XLV, 73-77, and his fifth Annual Message (1833), in *Senate Journal*, 23rd Congress, 1st sess., pp. 15-17. See also W. J. Duane, *Narrative and Correspondence Concerning the Removal of the Deposits, and Occurrences Connected Therewith* (1838).

<sup>64</sup> *Senate Journal*, 22d Congress, 1st sess., pp. 433-446. For Clay's speech on the veto, see his *Life and Speeches* (ed. 1844), II, 94-105. For Webster's speeches on the question, see his *Works* (ed. 1857), III, 391-447.

<sup>65</sup> Because about eight million dollars of its stock was owned by foreigners.

East, and to the poor against the rich. It was an assertion of executive independence and power against the increasing control of Congress over the President, and against the tendency of the Supreme Court to claim jurisdiction over questions of public policy. In this aspect it was a return to the original check and balance theory of the framers of the Constitution. As a result of Jackson's veto, the policy of regulating the paper currency of the country by a central bank was given up, and the way was opened for an expansion of the circulation of the state banks. Speculation, in public lands especially, led to the expansion of bank credit for financing such investments. This was one of the causes that led to the panic of 1837.

The almost unanimous agreement upon a policy of protecting American industries which characterized the period after the War of 1812 was considerably changed after 1830. The tariff of 1828 represented the high-water mark of protective legislation before the Civil War. The Middle states and the West were the stronghold of the protective movement. The West was influenced by the "home market" argument; the Middle states were the centers of the extractive and manufacturing industries. The South, which had favored protection under the influence of the strong national sentiment after the War of 1812, changed its attitude, and took a strong stand against the tariff. New England, which had been divided in the earlier period, because of the contest between the textile interests, which favored protection, and the shipping interests, which desired extensive trade with England, leaned more and more toward protection as the manufacturing came to outweigh the shipping interests. The opposition of the South,<sup>66</sup> and the important part which the leaders of that section played in the national government after 1830, led to a reaction against the "abominations" of the Act of 1828, and resulted in the compromise tariff of 1833, largely through the efforts of Henry Clay. The extreme protectionists of the North were compelled to make concessions to the determined stand of the South, especially after the nullification program of the "South Carolina Exposition."<sup>67</sup> The Act of 1833 provided for a gradual reduction of duties to a general level of 20 per cent, and by 1842 the reduction had been accomplished.

<sup>66</sup> For the arguments of the South against the tariff, see the able speech of Senator McDuffie of South Carolina in 1830.

<sup>67</sup> Calhoun's *Works* (ed. 1855), VI, 1-59. *Niles's Register*, XXXV, gives many documents showing the excitement in the South during 1828.

The panic of 1837 and other causes brought about a serious decline in government revenues, and to meet this deficiency it was thought best to raise the tariff duties. The advocates of protection again secured a brief lease of power. The tariff of 1842 restored duties to about the level of 1832, giving protection in particular to the industries of New England and the Middle states. The West was indifferent to the measure; the South was distinctly hostile. When the Democrats returned to power in 1845 they proceeded to reform the tariff along revenue lines. R. J. Walker, Secretary of the Treasury, proposed <sup>68</sup> that tariff legislation should be determined by financial considerations solely, and that import duties should be laid in accordance with sound principles of taxation. Protection should be quite incidental. High duties might be imposed on luxuries, but raw materials and the necessities of life should be admitted under low duties or placed on the free list. He declared that the argument that protection to manufactures insured high wages to labor was delusive. Walker believed that the reduction of our import duties on manufactures would lead to the repeal of the English Corn Laws and the opening of British ports to our agricultural products. In the debate <sup>69</sup> upon his tariff bill the antagonism between the manufacturing and the agricultural sections of the country was evident. The New England and Middle states opposed any reduction of the protective duties; the farmers and planters of the West and South favored the new policy of free trade. The Walker tariff bill was finally passed in 1846.

The low tariff held for ten years and was financially a great success. In his report of December, 1846, Walker said: "By free interchange of commodities the foreign market is opened to our agricultural products, our tonnage and commerce are rapidly augmenting, our exports enlarged, and the price enhanced; exchanges are in our favor, and specie is flowing within our limits. The country was never more prosperous and we have never enjoyed such large and profitable markets for all our products."<sup>70</sup> The period from 1846 to 1861 was one of great industrial prosperity in the United States. The discovery of gold in California, the rapid building of railroads and opening up of the West, the increase in immigration, the famine in Ireland, and other factors brought

<sup>68</sup> See his annual report of Dec., 1845. *Executive Documents*, 29th Congress, 1st sess., II, No. 6.

<sup>69</sup> F. W. Taussig, *State Papers and Speeches on the Tariff*, pp. 214-251.

<sup>70</sup> *Congressional Globe*, 29th Congress, 2d sess., Appendix, 12 (1846-1847).



about a great revival of business and a rise in prices. Government support once withdrawn, the protected industries, no longer infants, proved vigorous enough to stand alone. Government revenues increased until it became necessary to still further lower duties in order to reduce the redundant income. In 1857 a 5 per cent reduction was made and the free list was enlarged. Shortly after, a severe commercial and financial panic, caused by undue speculation, reduced government revenues and resulted in a series of Treasury deficits. Accordingly, the Morrill Tariff of 1861 restored duties to about the level of 1846.

Our free-trade epoch witnessed an enormous increase in the volume of our foreign trade and in our merchant marine. The ship-building industry recovered the prestige of earlier days. American sailors were noted for self-reliance and resourcefulness and the famous Yankee clippers were the swiftest and stanchest craft afloat. Our preëminence in the building and navigation of wooden sailing vessels proved our ultimate undoing. The attention of the shipping interests was so concentrated on fast clippers that it neglected the greater possibilities of the iron and steel steamships. England, where coal and iron were cheaper than in the United States, took advantage of this situation, and in addition her government stood ready to subsidize promising ventures in the new field. The English lines soon offered swifter and more regular service than sailing vessels could furnish, and, guaranteed against losses by government subsidy, bade fair to drive the American clippers from the foreign trade. In 1845 the American government came tardily to the aid of steam navigation, and gave subsidies to several American lines.<sup>71</sup> The prosperity of shipping was, however, viewed with concern by the Southern and Western states. Almost all of the subsidized steamers were built on the North Atlantic coast and sailed from Northern ports. It was considered unjust that the national government should support an industry whose profits accrued to a single section of the country. Southern planters protested that their cotton could be carried as cheaply in British vessels, and Southern statesmen vigorously opposed the subsidy. By 1858 Congress abandoned its subsidy policy and limited the amounts paid to the amount of sea and land postage on mails actually carried.

In the first half of the nineteenth century there was a mania for canal building, which was checked by the crisis of 1837. At-

<sup>71</sup> *Congressional Globe*, 32d Congress, 1st sess., pp. 1146-1725 *passim* (1852).

tention was then turned to the construction of railways, which were first built to supplement water transportation, to carry the products of the interior to the ports, and to connect the various water routes. The first railways were built in the more thickly settled parts of the East. By 1840 railway construction was begun in the West, and by 1850 transcontinental lines were planned.<sup>72</sup> Because of the vast distances, sparse population, and undeveloped resources, which meant that the vast capital required could not expect immediate profitable returns, railway construction demanded government assistance. Several of the Eastern roads were built by the states or with state aid in bonds and land. The new Western states were not able to finance the costly enterprise and appealed to Congress for aid. Following the precedent of land grants to canal projects, Congress began the policy of making land grants to the states to be turned over to railroads.<sup>73</sup> Vast areas of the public lands were disposed of for this purpose. In the early period the railroad was considered an unmixed benefit. Construction projects demanded large quantities of material and gave employment to an army of laborers. Railway transportation opened up the country, gave a stimulus to immigration and to Western settlement, and increased the value of land and of crops along the line of the road. It facilitated travel and intercourse, bound the country together, and stimulated national spirit. It enabled the government to extend and cheapen the postage service. Railway charters were given with few restrictions, and the attitude of the governments, state and national, was generous and encouraging. The period of consolidation and the accusations against the railroads of exorbitant charges and of discriminatory practices did not come until after the Civil War period.

By the middle of the century the economic divergence between North and South had become so marked as to give rise to considerable jealousy. The South was slow to take advantage of new agricultural methods or to develop new enterprises; and the benefits of government action accrued mainly to the North.<sup>74</sup> The tonnage of the Southern ports declined, in spite of their cotton trade, as the commerce of the Mississippi Valley was diverted to Northern ports by the new railways. The old lines of trade ran north and

<sup>72</sup> Asa Whitney, *Project for a Railway to the Pacific* (1849).

<sup>73</sup> J. B. Sanborn, "Congressional Grants of Land in Aid of Railways," in *Bulletin of the Univ. of Wisconsin*, No. 30 (1899).

<sup>74</sup> J. D. B. DeBow, *Industrial Resources of the Southern and Western States* (3 vols., 1852).

south on both sides of the Alleghenies. The coming of railways shifted the routes of economic lines to run east and west, and political allegiance followed material interests. Hostility to the North led to the projection of non-importation associations among the business men of the South. Circulars urged patriotic citizens to patronize Southern industry and discriminate against the products and merchants of the rival section. English goods and English commercial houses were to be preferred to those of the North. This hostility was closely connected with the growing bitterness over the slavery question. The resolution put forward by the business men of Mobile urged that "we reject as far as lies in our power, the merchandise and produce of the Northern states hostile to Southern institutions."<sup>75</sup> The aristocratic planters of the South had little in common with the capitalists of the North.

Prior to the establishment of the factory system there was little organization of labor in America and little activity of laborers as a class in politics. In the early days of Massachusetts the ship calkers organized a club, the purpose of which was "to lay plans for introducing certain persons into places of trust and power." From this "Calker's Club" the term *caucus* is said to have been derived. Various local unions of tailors, shipwrights, and carpenters were formed in the first quarter of the century, largely in imitation of the journeymen's unions in England. Occasional strikes occurred, usually followed by trials for conspiracy. The early organizations were formed mainly for benevolent purposes and were confined to the skilled workers. The unskilled laborers remained unorganized and inarticulate, and were unable to exert any influence upon legislation. The economic environment of a new country placed emphasis upon industrial individualism. After 1825, however, new elements and purposes appeared. Demands arose for higher wages and fewer hours of labor, and the spirit of coöperation and association was given an impetus by the altruistic preachings of Robert Owen, who came to America in 1824. His success in improving the conditions of laborers in his cotton mills in Scotland received considerable attention in America. An American traveler, Mr. Griscom, who visited his mills in 1819, wrote that they afforded "an eminent and instructive example of the good that may be effected by well-directed efforts to promote the real comfort and morality of the laboring classes." From Owen American laborers caught a new spirit and a new enthusiasm, and numerous com-

<sup>75</sup> DeBow, III, 122-123.

munistic experiments were tried as a part of the general humanitarian and reform movement of the period.

The concentration of population in industrial centers fostered organization. Unions began to be formed in the Northern states, and agitation for legislation on behalf of workingmen was carried on. Boston and New York City were the centers of agitation. Labor literature began to appear, the *Working Man's Advocate* being published in 1825. This was followed by the *Daily Sentinel* and *Young America*, which demanded the right of man to the soil, the breaking up of monopolies, the freedom of the public lands, and the abolition of all laws for the collection of debts. They also demanded equal rights for women and the abolition of wage slavery. The first trade-union journal in the world was the *Mechanics' Free Press*, published in Philadelphia from 1828 to 1831, antedating by two years any similar English publication. A Workingmen's Convention was held in 1830, and a Workingmen's party was organized. A great convention held at Boston in 1831 discussed many questions of interest to laborers, such as taxation, coöperative trading, hours of labor, and conditions of employment. A ten-hour day was demanded, the right of laborers to organize for the purpose of protecting their interests was considered and a consolidation of various unions was urged. In 1831 the New England association of farmers, mechanics, and other workingmen proposed "the organization of the whole laboring population of this united Republic," and the revision of "our social and political system." With the extension of the suffrage, workingmen began to organize to secure, by means of the ballot, laws that would benefit wage earners. The Workingmen's Party in 1835, as "Locofocos," captured the New York Democratic Convention and promulgated a party platform based on the Declaration of Independence. Various recommendations for legislative enactments were proposed. On the other hand, the merchants and shipowners of Boston voted to "discourage and check the unlawful combination formed to control the freedom of individuals as to the hours of labor, and to thwart and embarrass those by whom they are employed and paid." Their report set forth "the pernicious and demoralizing tendency of these combinations."

The early labor movement did not rise primarily as a protest against factory conditions, since most of the factory workers were women and children, and the factories were confined mainly to the cotton industry. It was rather a protest against the merchant-

capitalist system which was reducing the journeyman and the master mechanic to a common level of wage dependency. There was little that was extreme in its program, and little of the populist reaction that has generally characterized the pioneer attacks upon a creditor class. The movement had its philosophic as well as its political expression. Several writers<sup>76</sup> sought to express the attitude of Labor toward economic problems, and to construct a political economy based upon the labor-value theory. The issues that the early leaders emphasized were "hours of labor, wages, prices, paper money, public employment, factory legislation and the competition of women, prison competition, and freedom of the public lands."<sup>77</sup> They demanded that the public lands, which were largely in the hands of speculators, should be opened to the people, and thus afford an outlet to the oppressed wage workers. The early labor movement insisted upon the paramount importance of education. In political platforms, in resolutions of public meetings, and in the labor press the statement was repeated that the fundamental demand of Labor was for an adequate system of education.<sup>78</sup> Influential men, such as W. E. Channing and Horace Mann, gave their support and taught that education was the surest method of reaching the aims of the labor organizations.

While the early labor movement accomplished little, and the demand for a ten-hour day was a failure, the agitation continued<sup>79</sup> in spite of repressive legislation, attacks from without, and dissensions among the laborers themselves. Commissions were appointed in several states to investigate labor conditions, and reports were made by legislative committees. Massachusetts passed certain laws abolishing imprisonment for debt (1824), providing for the education of children employed in factories (1836), and limiting the hours of labor of children to ten per day (1842). The ten-hour day was gradually accepted in certain industries, and in 1840 President Van Buren issued a proclamation introducing the ten-hour system

<sup>76</sup> T. Skidmore, *Rights of Man to Property* (1829); L. Byllesby, *Sources and Effects of Unequal Wealth* (1826); S. Simpson, *Workingman's Manual* (1831). Simpson recommended the formation of parties based upon the "interests" of society, and foreshadowed the "class conflict" and "political action" doctrines of Karl Marx.

<sup>77</sup> J. R. Commons, ed., *Documentary History of Labor in the United States* (1910-1911), V, 33.

<sup>78</sup> See the *Free Enquirer*, Feb. 4, 1829; Aug. 12, 1829; Sept. 30, 1829; *Farmer's, Mechanics' and Workingmen's Advocate*, Apr. 3, 1830; *Mechanics' Free Press*, Sept. 19, 1829; *Workingman's Advocate*, Mar. 6, 1830.

<sup>79</sup> Seth Luther, *Address to the Workingmen of New England* (1836).

in "all public establishments."<sup>80</sup> The panic of 1837 and the subsequent industrial depression checked for a time the growth of the labor movement, but by 1842 a second wave of socialist enthusiasm passed over the North. Horace Greeley, the editor of the *New York Tribune*, and W. H. Channing, the editor of the *Spirit of the Age*, gave their support, a new group of communistic experiments was tried, and the necessity of legislative reforms was widely urged.

In general, however, the cause of labor was submerged in ambitious attempts at general social amelioration. Philosophical, humanitarian, and political protest took the place of organization and strikes. Not until the failure of the communistic experiments showed that the labor problem could not be solved by philanthropic socialism did the workingmen turn to coöperation and large-scale organization. The Revolution of 1848 in France contributed to the renewal of the agitation of American socialism and labor reform. The exodus from Ireland following the famine gave a further stimulus to the movement. In general, however, it was held that labor legislation interfered with the right of workers to contract freely, and was inexpedient, each state fearing that it would suffer in competition with other states if it took such action. A Massachusetts legislative committee in 1845 reported that a law fixing the hours of labor at eleven would "close the gate of every mill in the state." Not until after the Civil War did the movement for labor legislation make any considerable headway. This movement in American thought indicated, however, the beginning of a cleavage between capital and labor which would inevitably become an important issue in later politics. While the controversy over slavery and the nature of the union dwarfed all other questions, the economic developments of the period, in the growth of industry and cities, the combinations of capital, and the rise of a numerous and organized laboring class, were laying the foundation for equally difficult problems in the latter half of the century.

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<sup>80</sup> Van Buren owed his election in good part to the votes of the workingmen of the Eastern states.



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## CHAPTER IX

### POLITICAL THEORY OF SLAVERY AND STATES' RIGHTS

#### 1. POLITICAL THEORY OF SLAVERY

The early period of the anti-slavery agitation was pacific and was intended to persuade the South that slavery should be given up. Benjamin Lundy, a New Jersey Quaker, was the leading spirit in this effort. He traveled extensively in the South, organized emancipation societies, and published a paper, *The Genius of Universal Emancipation*, as a means of promoting his ideas. In 1816 the American Colonization Society was founded, for the purpose of furthering emancipation by sending the freedmen to Africa. To aid its operations the government in 1822 established the colony of Liberia on the west coast of Africa. By 1830, however, it was evident that both colonization and emancipation by persuasion had failed.

After 1830 the question of slavery became increasingly important in American political thought. This was the result of various causes. The wave of revolution which swept over Europe in 1830 brought the rights of man, human brotherhood, and the sovereignty of the people again into prominence. The invention of the cotton gin made possible the rapid expansion of the cotton industry and increased the demand for slave labor. The territorial expansion of the United States led to a bitter controversy over the extension of slavery in the new acquisitions. The agitation of the abolitionists brought the question into public discussion, unified the South in defense of its system, and hastened the process of sectional division of political parties. The foundation of the *Boston Liberator* by William Lloyd Garrison in 1831 marked the beginning of a vigorous campaign to arouse the national conscience. On the subject of slavery he proposed to "be as harsh as truth, and as uncompromising as justice." He said: "Urge me not to use moderation in a cause like the present. I am in earnest—I will not equivocate—I will not excuse—I will not retreat a single inch—and I will be heard."<sup>1</sup> In 1832 the New England Anti-Slavery

<sup>1</sup> *Liberator*, No. 1.

Society was formed. In 1833 the cause advanced to the organization of the American Anti-Slavery Society.<sup>2</sup> The declaration of principles of this body restated the principle of the Declaration of Independence that "all men are created equal," and asserted that the "guilt of our national oppression was unequalled by that of any other nation on the face of the earth, and therefore the nation is bound to repent instantly, to undo the heavy burdens, and to let the oppressed go free." They argued that "all laws now in force admitting the right of slavery are, before God, utterly null and void." They demanded immediate emancipation of all slaves without compensation to their owners.

For the next thirty years the doctrines of the opponents and supporters of slavery were fully stated, and many aspects of the question were considered. From the economic viewpoint an inquiry was made as to whether slavery was a profitable institution in comparison with free labor.<sup>3</sup> From the religious viewpoint, there was discussion as to whether slavery was sustained by the Scriptures<sup>4</sup> and was consistent with the principles of Christianity. From the ethical viewpoint, the relations of master and slave were examined as to their moral basis and results.<sup>5</sup> From the constitutional viewpoint, important questions were raised concerning the nature of United States citizenship, the admission of new states, and the authority of Congress over the territories. From the point of view of political theory, the concepts of liberty and natural rights were revived and reexamined with special reference to their relation to slavery.<sup>6</sup>

The anti-slavery theories took various forms,<sup>7</sup> ranging from the

<sup>2</sup> For the constitution of the American Anti-Slavery Society, see *William Lloyd Garrison, Story of His Life Told by His Children* (1889), I, 392-415.

<sup>3</sup> H. R. Helper, *The Impending Crisis of the South* (1859); G. S. Sawyer, *Southern Institutes* (1859).

<sup>4</sup> The American Anti-Slavery Society asserted that every man who owned slaves was, according to the Scriptures, a man-stealer. See *Exodus XXI*, 16. The supporters of slavery found an abundance of scriptural support for their institution. See A. Barnes, *Scriptural Views of Slavery* (1856), *The Church and Slavery* (1857); F. A. Ross, *Slavery Ordained of God* (1859); J. H. Hopkins, *Bible View of Slavery* (1863).

<sup>5</sup> For an argument that slavery was morally beneficial to both black and white, see Dr. W. G. Simms, *The Morals of Slavery* (1837); B. F. Stringfellow, *Negro Slavery, No Evil* (1854). For a moderate view of the moral effects of slavery, see Rev. N. Adams, *A South-Side View of Slavery* (1854).

<sup>6</sup> See speech of Wendell Phillips before the Massachusetts Anti-Slavery Society on Jan. 7, 1853, in which he defended the philosophy of the abolition movement. A. Johnston, *American Orations* (1927), I, Pt. II, 219-267.

<sup>7</sup> For general statements of the anti-slavery theory, see W. Jay, *Miscellaneous Writings on Slavery* (1853); W. Goodell, *Slavery and Anti-Slavery* (1852).

radical doctrines of the extreme abolitionists to the more philosophical views of men like Hildreth and Channing, and the statesmanlike attitude of Lincoln. The radical abolitionists demanded the immediate abolition of slavery without compromise.<sup>8</sup> They accepted the dogma that all men are created equal and possess inalienable rights which no government can take away. They regarded liberty as one of these rights. The platform of the American Anti-Slavery Society declared that "the right to enjoy liberty is inalienable." They argued, therefore, that all laws that recognized slavery were null and void, since the state had no authority to destroy the natural rights of any person. Because the Constitution of the United States recognized slavery, they branded it as a "covenant with death and an agreement with hell." Many of them argued for a dissolution of the Union, because they were unwilling to have any dealings with slave-holders. The individualism of the extreme radical wing of the abolitionists led them to attack all government as an evil.

The New England Non-Resistance Society, led by Garrison and Noyes, declared in 1838 that its members could not "acknowledge allegiance to any human government." They advised that no physical force should be used, that all should refuse to vote, hold office, or appeal to the courts. Thoreau<sup>9</sup> declared that the best government is no government at all, and that when men were fully developed they would need none. A person was a man first and a subject afterward; when his conscience clashed with the law, the latter must yield. No government, he said, had any "right over my person and property but what I concede to it." Similar individualistic views were put forward by Emerson.<sup>10</sup> These doctrines were closely associated with certain religious, pacifistic, and socialistic ideas that were arising in America. They led to a transcendental and individualistic "perfectionism" which was to be attained by "coming out" from both church and state.<sup>11</sup> It was one phase of the liberal and humanitarian sentiment, accompanied by many reforms and crusades, that marked the period.

The more moderate abolitionists recognized the necessity of government, but argued that there was a "higher law" than the

<sup>8</sup> W. P. and F. J. Garrison, *Life of Garrison* (3 vols., 1889).

<sup>9</sup> *Civil Disobedience* (1849).

<sup>10</sup> Essays on "Self-Reliance" and "Politics."

<sup>11</sup> V. L. Parrington, *The Romantic Revolution in America* (1927), Bk. III, Pt. II.

Constitution, and that slavery was contrary to this higher law.<sup>12</sup> They held that no person was bound by any law or court decision that contravened the higher law of God written in the hearts of men. This point of view appeared especially in opposition to the Fugitive Slave Law. Its supporters argued that since slavery was contrary to the "higher law," no legislature could make right wrong, or wrong right. They said that there were certain principles of government, among which was the right to freedom, so fundamental that no constitution or law could override them. Webster, although opposed to the extension of slave territory, upheld slavery in the Southern states and supported the Fugitive Slave Law. He was eager for compromise with the South, and took a legalistic attitude toward the controversy.<sup>13</sup> Recognizing no higher law than the Constitution, he argued that the restitution of runaway slaves was legal. He would suffer no popular interference with Congress, and was "against agitators, north and south." The liberal thinkers of New England denounced Webster as reactionary and materialistic, completely out of touch with the humanitarian tendencies of the times.<sup>14</sup>

A more philosophical and rational attack on slavery was made by a group of scholarly thinkers,<sup>15</sup> who argued that since every man is a moral being he must be recognized as a person and cannot be considered merely as property. All men have attributes common to humanity and are in that sense equal. All men possess certain rights and must be free to exercise them so long as they do not interfere with the rights of others. These rights must be respected by other individuals and must be acknowledged and maintained by the government. Channing argued that the God-given moral nature of man necessitates freedom both of body and of mind, and that slavery was not a question of expediency or economic advantage, but of moral and natural right. "Right is older than human law. Law ought to be its voice." Slavery, therefore, was fundamentally

<sup>12</sup> W. Hosmer, *The Higher Law in Its Relation to Civil Government with Particular Reference to the Fugitive Slave Law* (1852); C. K. Whipple, *The Non-Resistance Principle, with Particular Application to the Help of Slaves by Abolitionists* (1860). See speech of Seward in *Congressional Globe*, 31st Cong., 1st session, Appendix.

<sup>13</sup> See his "Speech on the Compromise Measure," in *Works*, V, 433, and his "Seventh of March Speeches," in *Works*, V, 357.

<sup>14</sup> T. Parker, *Discourse Occasioned by the Death of Daniel Webster* (1853).

<sup>15</sup> W. E. Channing, *Essays on Slavery* (1835); F. Wayland, *The Elements of Moral Science* (1835); R. Hildreth, *Theory of Politics* (1853), *Despotism in America* (1854).

unjust and could not be justified on a rational basis. They argued further that slavery was destructive of democracy, destroying liberty and tending to make men arrogant, imperious, and incapable of obedience. This group did not insist on the absolute equality of mankind, nor did they believe that the slaves were fully and immediately competent for self-government, but they did insist that slavery was an undue subversion of human rights and that the welfare of the individual was more important than that of the state.

The anti-slavery doctrines of a large group of statesmen, who were neither radical abolitionists nor philosophical moralists, were well represented by Lincoln.<sup>16</sup> He held that the doctrine that all men are equal should not be interpreted literally, but should be viewed as an ideal toward which men should strive. He recognized the differences in ability and endowment between whites and blacks, but insisted that "no man is good enough to govern another man without that other's consent." Since slavery was destructive of the principle of self-government it could not survive in a democracy. Either democracy must wipe out slavery, or slavery would lead to despotism. He insisted that freedom and slavery could not permanently exist side by side, and that the nation could not permanently endure half slave and half free. He recognized, however, the difficulties involved in the transition from bondage to freedom and, unlike the abolitionists, advised a policy of moderation and caution. He did not demand immediate emancipation, nor entire political equality for the slaves. He agreed, however, that slavery was an evil, and that it must ultimately be abolished.

Until the agitation of the abolitionists, the slave-owners generally took an apologetic attitude toward the institution, and many were favorable to gradual emancipation. The bitterness of the attack, however, aroused the pride of the South and led it to justify its position. Southern leaders began to defend slavery, not merely as a necessary evil, but as a positive good.<sup>17</sup> Calhoun stated that

<sup>16</sup> *Works*, ed. by Nicolay and Hay (2 vols., 1894).

<sup>17</sup> For statements of the pro-slavery arguments, see Calhoun, *Works* (1838); A. T. Bledsoe, *An Essay on Liberty and Slavery* (1856); W. G. Simms, *The Morals of Slavery* (1837); G. S. Sawyer, *Southern Institutes* (1859); F. R. Dow, *Review of the Debates in the Virginia Legislature* (1833); W. A. Smith, *Lectures on the Philosophy and Practice of Slavery* (1857); J. Fletcher, *Studies on Slavery* (1852); J. K. Paulding, *Slavery in the United States* (1836); F. A. Ross, *Slavery Ordained of God* (1859); J. D. B. DeBow, *The Industrial Resources of the South* (1853); W. Harper, *Memoir on Negro Slavery* (1852); J. H. Hammond, *Two Letters on Slavery Addressed to Thomas Clarkson* (1845); Rev. S. Seabury, *American Slavery* (1861); G. Fitz-Hugh, *Sociology for the South, or the Failure of Free Society* (1854), *Cannibals All, or Slaves Without Masters* (1857).



the discussion of the question "compelled us of the South to look into the nature and character of this great institution, and to correct any false impressions that even we had entertained in relation to it."<sup>18</sup> He argued that the negroes were better cared for than the white laborers of the North, and that the relation between master and slave furnished "the most solid and durable foundation upon which to rear free and stable political institutions."

Many of the ablest defenders of slavery denied the principles of the natural rights school of philosophy. They attacked the dogma that all men are created equal, calling it a finely sounding phrase significant of sentimental French philosophy, but one which no rational man could accept at face value. They insisted that men are unequal, and that inequality is a condition essential to human progress. It was the necessary principle upon which government rested. They also denied that men possess natural rights,<sup>19</sup> which they contemptuously called "systems fabricated by theoretical writers." Rights, they insisted, were the outcome of society and government. Men possessed such rights as the state found it expedient to grant. The pre-political state of nature was held to be a pure fiction. Government was not an artificial creation, the result of man's choice, but was a fundamental necessity growing out of the natural instincts of man. Calhoun, in particular, condemned the social contract doctrine of state origin. The "state of nature" he regarded as a mere fiction. The natural state of man, he held, was social and political. Those defenders of slavery who still held to the natural rights philosophy tried to make it accord with the practice of slavery. It was argued that under slavery the negro was able to attain a fuller development than if he were left to himself to revert to barbarism.

The supporters of slavery<sup>20</sup> believed that the status of each individual should be determined by his ability and capacity. Freedom was not a natural right possessed by all, but was a privilege which men attained who were fit to possess it. The negroes, as an inferior race, were considered to be unfit for liberty and incapable of self-government. Since they were unfit to govern themselves, there was no injustice in governing them without their consent. The re-

<sup>18</sup> *Works*, II, 180.

<sup>19</sup> T. Cooper, *Lectures on the Elements of Political Economy* (1826); H. S. Legaré, *Writings* (1846).

<sup>20</sup> For an intimate view of the opinions of leaders in the South, see the "Correspondence of Robert Toombs, Alexander H. Stephens, and Howell Cobb," ed. by U. B. Phillips, in *American Historical Association Reports* (2 vols., 1911).

lation between master and slave was regarded as one between guardian and ward; the slave was not the victim of oppression, but was being governed for his own good. The conditions of the slaves were contrasted to their advantage with the conditions of the free laborer in the Northern cities<sup>21</sup> and of the working class in England.<sup>22</sup> Many went further and argued that slavery was a positive good, essential to the highest form of civilization.<sup>23</sup> Calhoun declared in Congress that "there has never yet existed a wealthy and civilized society in which one portion of the community did not, in point of fact, live on the labor of the other."<sup>24</sup> The upholders of slavery abandoned the doctrines of Locke and Blackstone and returned to the political theory of Plato and Aristotle, which upheld the idea of a class division in the state. Those who were fitted only for manual labor should perform the drudgery of the state, so that the superior class might enjoy the leisure necessary to the cultivation of political affairs. Southern thought in the years preceding the Civil War showed a pronounced drift toward the ideal of Greek democracy. It pictured a humane and cultured society, set free from economic exactions by slave labor, and devoted to the higher work of civilization.<sup>25</sup> Some even went so far as to attack the doctrine of democracy, to view liberty as an evil, and to uphold slavery as the best possible basis for any society. Governor Hammond, in a letter to Calhoun in 1850, stated that "free government and all that sort of thing has been a fatal delusion and humbug from the time of Moses."<sup>26</sup>

The abolitionist crusade was part of a world-wide idealistic and humanitarian movement. The pro-slavery theory had much in common with the scientific thought of the time. The biological doctrine of evolution emphasized the struggle for existence and the survival of the fittest, and taught that the result of this process was progress. To the slave-owners, their society was in accord with this method of nature. It was the result of the natural differences between white and black. The views of the abolitionists they regarded

<sup>21</sup> W. J. Grayson, *The Hireling and the Slave* (1856).

<sup>22</sup> Governor Hammond, *Letters on Slavery* (1845); L. B. Chase, *English Serfdom and American Slavery* (1850); J. W. Page, *Uncle Robin in His Cabin in Virginia and Tom Without One in Boston* (1855); S. H. Elliott, *New England Chattels* (1858).

<sup>23</sup> See G. Fitz-Hugh, *Sociology for the South, or the Failure of Free Society* (1854), for an extreme statement of the pro-slavery theory.

<sup>24</sup> *Works*, II, 631.

<sup>25</sup> J. R. Tandy, "Pro-Slavery Propaganda in American Fiction in the Fifties," in *South Atlantic Quarterly*, Jan.-Mar., 1922.

<sup>26</sup> *Correspondence of John C. Calhoun*, 1212.

as visionary and impractical efforts to interfere with the great process of nature. The opponents of slavery regarded it as economically wasteful, socially demoralizing, and incompatible with democracy. The supporters of slavery believed it to be economically advantageous, socially elevating, and conducive to the highest form of aristo-democracy. The former group regarded democracy as applicable to all persons in society, and believed that liberty was the birthright of all. The latter group held that democracy was a relation within a certain class, and that liberty should be given only to those who had political capacity to use it. The South believed that since the negro was not qualified to possess equal rights, he should have no rights whatever; the abolitionists believed that since he was entitled to some rights he should immediately be given all rights. From the point of view of present-day political theory, both were in error.

## 2. CONGRESSIONAL POLICY REGARDING SLAVERY

Since the extreme abolitionists would have nothing to do with existing legal methods, the Southerners saw in their agitation the destruction of all law and order, the plunder of their property, the plotting of slave insurrection, and a period of violence and anarchy. Legal methods of attack were, however, tried by the more moderate opponents of slavery. They appealed to the government to do all within its constitutional powers against slavery. Their petitions to Congress and the distribution of their literature through the mails brought the question of their purposes and their rights before the government. From the beginning of the century, petitions for the abolition of slavery in the District of Columbia were presented to Congress, generally from Quaker sources. These petitions irritated the slave-holders, but it was not until after 1830 that they were angrily resented as an interference with the domestic institutions of the slave-owning states. In 1851 John Quincy Adams<sup>27</sup> began his vigorous support of abolition petitions; and by 1851 the storm in Congress over slavery petitions raged in full fury, and opportunity was taken to discuss the whole question of slavery on the floor of both houses. Supporters of slavery argued that such petitions should not be received by Congress, since Congress had the right to make its own rules of procedure. On the other

<sup>27</sup> For Adams's defense of freedom of speech, press, and petition, see *Congressional Globe*, 27th Congress, 2d sess., pp. 208-215.

lation between master and slave was regarded as one between guardian and ward; the slave was not the victim of oppression, but was being governed for his own good. The conditions of the slaves were contrasted to their advantage with the conditions of the free laborer in the Northern cities<sup>21</sup> and of the working class in England.<sup>22</sup> Many went further and argued that slavery was a positive good, essential to the highest form of civilization.<sup>23</sup> Calhoun declared in Congress that "there has never yet existed a wealthy and civilized society in which one portion of the community did not, in point of fact, live on the labor of the other."<sup>24</sup> The upholders of slavery abandoned the doctrines of Locke and Blackstone and returned to the political theory of Plato and Aristotle, which upheld the idea of a class division in the state. Those who were fitted only for manual labor should perform the drudgery of the state, so that the superior class might enjoy the leisure necessary to the cultivation of political affairs. Southern thought in the years preceding the Civil War showed a pronounced drift toward the ideal of Greek democracy. It pictured a humane and cultured society, set free from economic exactions by slave labor, and devoted to the higher work of civilization.<sup>25</sup> Some even went so far as to attack the doctrine of democracy, to view liberty as an evil, and to uphold slavery as the best possible basis for any society. Governor Hammond, in a letter to Calhoun in 1850, stated that "free government and all that sort of thing has been a fatal delusion and humbug from the time of Moses."<sup>26</sup>

The abolitionist crusade was part of a world-wide idealistic and humanitarian movement. The pro-slavery theory had much in common with the scientific thought of the time. The biological doctrine of evolution emphasized the struggle for existence and the survival of the fittest, and taught that the result of this process was progress. To the slave-owners, their society was in accord with this method of nature. It was the result of the natural differences between white and black. The views of the abolitionists they regarded

<sup>21</sup> W. J. Grayson, *The Hireling and the Slave* (1856).

<sup>22</sup> Governor Hammond, *Letters on Slavery* (1845); L. B. Chase, *English Serfdom and American Slavery* (1850); J. W. Page, *Uncle Robin in His Cabin in Virginia and Tom Without One in Boston* (1855); S. H. Elliott, *New England Chattels* (1858).

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hand, it was argued that the Constitution guarantees the right of the people to petition the government for redress of grievances. For a time Congress managed to evade the issue by receiving the petitions and laying them on the table. Moderates on both sides wished to avoid anti-slavery agitation in Congress.

Southern members, however, were determined that anti-slavery petitions should not be received by the House and, in spite of the efforts of Adams, Speaker Polk ruled (1836) that the constitutional right to petition did not include the right to have the petition received by the House. Months of agitation followed, which did much to bring the slavery issue into the foreground of politics. Finally (May 25, 1836) the House resolved that "Congress possesses no constitutional authority to interfere in any way with the institution of slavery in any of the States of the Confederacy; that Congress ought not to interfere with slavery in the District of Columbia; and whereas it is extremely important and desirable that the agitation of this subject should be finally arrested, for the purpose of restoring tranquillity to the public mind, . . . that all petitions, memorials, propositions or papers, relating in any way, or to any extent whatsoever, to the subject of slavery, or the abolition of slavery, shall, without being printed or referred, be laid upon the table, and that no further action whatever shall be had thereon."

Increase in the number of petitions, and resolutions of New England legislatures, declaring that the rule of the House of Representatives in regard to abolition petitions was a violation of the people's constitutional right, led the House to take more stringent action; and in 1840 it enacted, "that no petition, memorial, resolution or other paper, praying the abolition of slavery in the District of Columbia, or any state or territory, or the slave-trade between the states or territories of the United States in which it now exists, shall be received by this House, or entertained in any way whatever." While the Senate did not formally refuse to receive petitions on slavery, it reached about the same result in practice. It was generally believed throughout the North that both houses of Congress had placed the interests of slavery above the constitutional rights of the people. By this action the Southern radicals identified the denial of the right of petition with the interests of slavery, and did their cause great harm.

The abolitionists were more successful in their attempt to use the mails of the United States for the distribution of their litera-



ture throughout the South. The Southerners considered their opinions dangerous to the peace and safety of their communities and argued that they had the legal right to prevent the delivery of such material by mail. In Jackson's message to Congress in 1835 he denounced the methods of the abolitionists as intended to excite a servile war, and advised Congress to pass a law prohibiting, "under severe penalties, the circulation in the Southern States, through the mail, of incendiary publications intended to instigate the slaves to insurrection." Calhoun argued that Congress had no authority to make such laws, but that the states should control the matter. Through his exaggerated States' rights doctrine he lost the aid of the general government in his contest with the abolitionists over the use of the mails, and in 1836 an Act of Congress protected abolition documents in the mails.

The controversy in Congress and throughout the country over the abolition petitions and the use of the mails did much to make a political party out of the abolitionists. It led the North to believe that the slavery system would ultimately destroy civil and political liberty, since the preservation of slavery demanded the denial of freedom of speech and of the press, and of the right to petition. It also taught the South that there was a growing sentiment in the North hostile to slavery at every point, and that it was essential that the South should secure additional weight in Congress. This led to the demands for territorial expansion and for the extension of slavery to new territories. It also aroused the fear of slave insurrection, incited by abolitionists, throughout the South. This led to increasing legal restriction upon the slaves, and brought the institution into closer connection with the public authorities. It also led to the creation of a military spirit and a military organization among the slave-owning class, which in turn gave an impetus to the imperialistic tendencies of the Southern section.

The constitutional question of the power of Congress with regard to slavery in new territories was reopened by the annexations following the Mexican War. The spirit that prevailed at the time the Missouri Compromise was adopted no longer existed. The North considered the war as an act of Southern aggression and was determined to prevent the further extension of slavery. In 1846 Wilmot, a Pennsylvania Democrat, offered his *Proviso* that none of the territory acquired in the war should be opened to slavery. This passed the House, where the North was in control, and was barely defeated in the Senate. It aroused a storm of protest in the

South, where the feeling prevailed that an effort was being made to exclude its interests from the domain for which it had struggled. Sectionalism was rampant and the Union seemed imperiled. The effort to consolidate the various groups who opposed the extension of slavery led to the formation of the Free Soil party in 1848. This party demanded that the territories be devoted to freedom and that the public lands be distributed free to actual settlers.

Both Democrats and Whigs avoided the question of slavery in their platforms, but the necessity of organizing governments in Oregon and California made the issue more urgent than ever. Finally the Northwest Ordinance was applied to Oregon, making it a free territory, but no agreement could be reached on California. Polk suggested that the Missouri Compromise be extended to the Pacific and some favored the idea, but this suggestion was not adopted. Northern members tried to prohibit slavery in the District of Columbia; Southern members urged a more stringent fugitive-slave law. Southern legislatures passed resolutions against the sentiment of discrimination against slavery. Northern legislatures replied by demanding the exclusion of slavery from the territories. Threats of disunion were freely uttered; and before Congress adjourned in 1849 a committee of Southerners set forth an address which reviewed the rise of opposition to slavery, attacked the aggressive spirit of the North, declared that the South had been denied its fair share of the new territory, and urged united Southern resistance. The issue was fast destroying the Whig party in the South, and was threatening Democratic unity in the North.

Various suggestions of compromise were made by moderate leaders and by party managers, who desired to retain existing party alignments. The extension of the Missouri line to the Pacific was again urged, but the anti-slavery elements opposed. A plan was then brought forward providing that Congress should take no action in a territory, but that the people of the territory should decide the question of slavery for themselves when the territory became a state. This doctrine, proposed by Cass in 1847, and supported later by Douglas, who named it "popular sovereignty,"<sup>28</sup> was in accordance with the Southern principle of States' rights, but was not satisfactory to the anti-slavery men. Clay, who returned to the Senate in the hope of saving the Union, proposed

<sup>28</sup> Later nicknamed "squatter sovereignty."

a compromise,<sup>29</sup> providing for the admission of California as a free state, the creation of the territories of New Mexico and Utah with no provisions concerning slavery, the assumption of the debt of Texas and the relinquishment by her of her claims in New Mexico, the prohibition of the slave trade in the District of Columbia, the more effectual return of fugitive slaves, and the assertion that Congress could not forbid interstate slave trade. Clay defended this solution in an able address<sup>30</sup> protesting his loyalty to the Union and declaring that the nation had come to the point of dividing, and that both sides should make concessions. He held out the olive branch to "both parts of this distracted and unhappy country," and urged that secession could mean only war, out of which a Cæsar might rise to put an end to self-government and "crush the liberties of both the severed portions of this common empire." Calhoun replied,<sup>31</sup> showing how the equilibrium between North and South had been destroyed by the preponderance of Northern population, by the Northwest Ordinance, and by the Missouri Compromise. He was convinced that the Union as it existed no longer guaranteed the liberties of the South and that the Constitution had been transformed by the interpretation of Northern control into a means of repression and tyranny. He argued that the agitation against slavery had divided the country, and proposed an amendment to the Constitution guaranteeing to the South an equal share of the territories, an effective fugitive-slave law, and a cessation of anti-slavery agitation. To the Northern Senators he said: "If you who represent the stronger portion cannot agree to settle these questions on the broad principles of justice and duty, say so; and let the states we both represent agree to separate and part in peace." Webster, who had no enthusiasm for abolition, but who was dismayed at the prospect of disunion, urged that abolition agitation be stopped and that the South be not driven to the last ditch.<sup>32</sup> He said that he spoke "not as a Massachusetts man, nor as a Northern man, but as an American . . . for the preservation of the Union," and supported the compromise measures at every point. He was willing to go to any reasonable length to secure the rights guaranteed to the South by the Constitution. His attitude was praised by conservative senti-

<sup>29</sup> *Senate Journal*, 31st Congress, 1st sess., pp. 118-119.

<sup>30</sup> Benton's *Abridgment of Debates in Congress*, XVI.

<sup>31</sup> *Works*, IV, 535-578.

<sup>32</sup> *Works* (ed., 1857), V, 324-366, 373-405, 412-438.

ment in the North, but was bitterly attacked by the radical anti-slavery group. He was compared with Benedict Arnold as a traitor to his state. "Webster is a fallen star, Lucifer descending from heaven," it was said. Lowell spoke of his "mean and foolish treachery," and Whittier gently sang the dirge of his "departed glory." Finally, after bitter debate, the "Omnibus Bill" compromises proposed in Clay's resolutions were adopted (1850), and many hoped that a final settlement of sectional divisions had been reached. Both Democratic and Whig conventions in 1852 resolved to accept the compromise as final and to resist any attempt to renew the slavery agitation. The press, especially in the West and South, was filled with expressions of joy and congratulation on the success of the compromise efforts. The country was prosperous, and conservative men in all sections believed that the time had come for the country to devote itself to the magnificent prospect ahead. The Compromise was a "business man's peace."

Difficulties in enforcing the Fugitive Slave Law, and the controversy over the Nebraska country soon revived the controversy.<sup>33</sup> Abolitionists, who set their moral convictions above the law, were opposed to the return of any escaped slave, and the "underground railway" redoubled its activities in smuggling slaves to the North and to Canada. Mass meetings in the North condemned the Fugitive Slave Act in language as seditious as that previously used in the South against the Wilmot Proviso. They declared it "null and void," and asserted an "absolute refusal to obey its inhuman and diabolical provisions." The legislature of Wisconsin declared the Fugitive Slave Law a direct violation of the Constitution, and asserted that the states, "being sovereign and independent," were the proper judges of its constitutionality. On the other hand, Chief Justice Taney, in language that would have delighted Marshall, asserted on this issue the supremacy of federal law and the right of the Supreme Court to be the final arbiter of the Constitution. Southern extremists also continued the agitation, and "Southern Rights" associations were formed, calling for the formation of a new Southern party. While Pierce, in his inaugural address in 1853, declared the "perilous crisis" safely passed and the slavery question "at rest," and in his first message to Congress spoke of "the sense of repose and security to the public mind," the bill

<sup>33</sup> See speech of Charles Sumner in the Senate on Aug. 26, 1852, on the repeal of the Fugitive-Slave Law. A. Johnston, *American Orations* (1927), I, Pt. II, 268-340.

for the organization of the Nebraska territory reopened the whole controversy and led straight toward Civil War.

### 3. THEORY OF THE RELATION OF THE STATES TO THE UNION

In colonial days there was a decided reluctance to form any union at all binding upon the separate colonies. Under the enthusiasm of the Revolutionary movement a decidedly national attitude was assumed, but this was abandoned in the Articles of Confederation. In the formation of the Constitution there was a reaction toward the national spirit, but from the beginning of the Republic there were marked differences of opinion in regard to the nature of the new Union. That the states were separately sovereign after 1776 was conceded by Hamilton, Madison, and Webster, and was not questioned until a half-century after the federal system was established. Under the Articles of Confederation the separate sovereignty of the states was retained. When the federal government was formed, there was a general desire to create a closer union, but no intention to form a centralized state. *The Federalist*<sup>84</sup> stated that "so long as the separate organization of the members be not abolished; so long as it exists by a constitutional necessity for local purposes, though it be in perfect subordination to the general authority of the union, it would still be in fact and in theory an association of states or a confederacy."

It was generally held in the early period that sovereignty was capable of division, and that the new Union was partly national and partly federal. Sovereignty was divided between the states and the nation, each being sovereign in its own field. The states gave up a part of their sovereignty and retained the remainder. The Constitution was the result of a compromise between the advocates of particularism, or state sovereignty, and those who favored nationalism. The states were unwilling to accept the position of communities wholly devoid of sovereignty under a supreme central organization. Liberty was regarded as essentially local, and was associated with self-government in small communities. Centralization was feared as favorable to the establishment of tyranny. It was generally accepted that the power of government should be strictly limited and thoroughly divided. This point of view was frequently expressed in the writings of the founders, in decisions of the Supreme Court, in the works of political philos-

<sup>84</sup>No. 9.

ophers, and was generally current until the contest between nationalism and particularism became acute in the controversy over slavery. The idea of divided sovereignty was facilitated by the prevailing belief in popular sovereignty. This made it possible to quiet the contention between the states and the Union by referring to the authority above them both, the people.

*The Federalist* frequently suggested the division of sovereign power.<sup>35</sup> Madison held that sovereignty was divided between the states and the Union, so that the whole society consisted of a number of partial sovereignties.<sup>36</sup> Nathan Dane wrote that in the United States we "give and distribute almost *ad infinitum* delegated powers, or what is vaguely called sovereignty."<sup>37</sup> Nathaniel Chipman wrote that "the opinion formerly entertained that the sovereignty of a state was a sort of indivisible essence, a power absolute, uncontrolled and uncontrollable, has been corrected in modern times. Experience has shown it capable of division."<sup>38</sup> T. M. Cooley<sup>39</sup> wrote that in American constitutional law there is "a division of sovereignty between the national and state governments by subjects," each authority having "supreme, absolute and uncontrollable power" within its own sphere. The Supreme Court declared that "the United States are sovereign as to all the powers of government actually surrendered. Each state in the Union is sovereign as to all the powers reserved."<sup>40</sup> De Tocqueville<sup>41</sup> found in America that "the rules of logic were broken," and that there were two separate sovereignties, one of the Union and one of the states. Such a system he thought was feasible in the United States, but was not possible in the military monarchies of Europe. The theory of absolute and indivisible sovereignty was considered to be an Old World doctrine and was associated with absolute and centralized monarchy. The term *sovereignty* itself was distasteful to many. The Americans were trying a new experiment in government and believed that they had also worked out a new and im-

<sup>35</sup> Nos. 2, 4, 9, 31, 32, 82.

<sup>36</sup> *Works*, IV, 393-394.

<sup>37</sup> *General Abridgment and Digest of American Law* (1823-1829).

<sup>38</sup> *Principles of Government* (1833). For similar views, see John Taylor, *New Views of the Constitution* (1822), E. D. Mansfield, *Political Grammar of the United States* (1834), F. Grimke, *Nature and Tendency of Free Institutions* (1848).

<sup>39</sup> *Constitutional Limitations* (1868), p. 1.

<sup>40</sup> *Chisholm v. Georgia*, 2 *Dallas*, 435 (1792). See also *Ware v. Hylton*, 3 *Dallas*, 232 (1796), *McCulloch v. Maryland*, 4 *Wheaton*, 316 (1819), *Worcester v. Georgia*, 6 *Peters*, 591-592 (1832).

<sup>41</sup> In his *Democracy in America* (1835).



proved theory of sovereignty.<sup>42</sup> Webster asserted in 1833 that the sovereignty of government is "an idea belonging to the other side of the Atlantic; no such theory is known in North America . . . with us, all power is with the people."<sup>43</sup> As late as 1885, P. Bliss wished to eliminate the concept of sovereignty from all states. "It suggests personal supremacy, and ignores the true province of the magistrate. . . . Justice is the only true sovereign."<sup>44</sup>

The term *sovereignty* does not appear in the Constitution, and it has been held by some writers that the issue was purposely avoided by its framers. A. W. Small<sup>45</sup> stated that "the people of the United States simply dodged the responsibility of formulating their will upon the distinct subject of national sovereignty." F. A. Walker wrote:<sup>46</sup> "The issue was one which, if not purposely made doubtful, was purposely left doubtful, because any attempt to force the issue at that time would have meant nothing more or less than the immediate and complete failure of any scheme of union." While a few of the ablest thinkers of the period may have realized that there was lacking in the Constitution a decisive answer to the question of the ultimate location of sovereignty in the United States, there is little evidence to show that the issue was deliberately avoided. To most persons at the time the question presented no particular difficulty. They intended to establish not only a central governmental power which was to act as the common agent in certain matters for a league of sovereign states, but also to create a national system under which no right of nullification of federal law or of withdrawal from the Union was to be reserved by the states. That this view was logically contradictory did not prevent its acceptance at that period. This confusion was made possible by the general belief in natural rights, popular sovereignty, and the establishment of political authority by means of a social contract. It was held that a public will was created by a union of individual wills, that public rights were based upon a surrender of certain individual rights on the part of individuals, originally sovereign, who retained certain natural rights. It was natural, therefore, that they should believe it was equally possible for a national sovereignty to be created through the mutual agree-

<sup>42</sup> Compare the theory of divided sovereignty and of a non-sovereign state worked out in Germany in the process of its unification. See C. E. Merriam, *History of the Theory of Sovereignty Since Rousseau* (1900), Ch. X.

<sup>43</sup> *Works*, III, 469.

<sup>44</sup> *Of Sovereignty*, pp. 173-175.

<sup>45</sup> *The Beginnings of American Nationality* (1890).

<sup>46</sup> *The Growth of American Nationality* (1895).

ment of thirteen separately sovereign states, which might still retain a certain sovereignty of their own. The Union, it was believed, was formed by an agreement to which states were the parties. This contract was binding and could not be abandoned at will. As Madison said: "It is the nature and essence of a compact that it is equally obligatory on the parties to it, and of course that no one of them can be liberated therefrom without the consent of the others, or such a violation or abuse of it by the others as will amount to a dissolution of the compact."<sup>47</sup> In extreme cases the states might exercise their revolutionary right, but there was no legal way by which the Union could be dissolved.

Behind the states were the people of the states, and it was generally agreed that the new government should secure their assent, acting in conventions called for that purpose. It was not sufficient for the existing governments of the states to create a new political sovereignty; a legitimate basis could be secured only in the popular sovereignty upon which all political authority was believed ultimately to rest. In the Constitutional Convention, Madison declared "the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a league, or treaty, and a constitution." Rufus King averred that popular ratification was the best way to dispel "all doubts and disputes concerning the legitimacy of the new Constitution." Chief Justice Marshall asserted that when it "was deemed necessary to change this alliance into an effective government, possessing great and sovereign powers and acting directly on the people, the necessity of referring it to the people, and of deriving its powers directly from them, was felt and acknowledged by all."

Nowhere in the debates in the Federal Convention, nor in the state ratifying conventions, nor in the pamphlets put forward by both sides on the question of ratification did any assertion of the right of secession appear. Declarations were made of the moral right of revolution by the people in case of oppression. New York in her ratification declared that "the powers of government may be reassumed by the people whensoever it shall become necessary to their happiness," but no statement of the right of a state to destroy the Union was suggested. On the contrary it was feared by those who opposed ratification that the proposed Constitution would destroy the individual states. Mason, in the Virginia con-

<sup>47</sup> *Works*, IV, 63.

vention, declared: "This paper will be the great charter of America; it will be paramount to everything. After having once consented to it we cannot recede from it." Richard Henry Lee wrote: "It is to be observed that when the people shall adopt the proposed Constitution, it will be their last and supreme act."<sup>48</sup> Madison wrote that "the Constitution requires an adoption in toto and forever."

To the theorists of 1789 there seemed to be no difficulty in a divided sovereignty, and therefore in the existence of a sovereign national state composed of constituent sovereign states. By accepting the doctrine that all political authority is derived from the people, without clearly stating whether by "the people" they meant the citizen bodies of the thirteen states considered separately, or the whole American people conceived as a single body politic, they gave no real answer to the question of the final location of sovereignty in America, but merely pushed the problem one step farther back and left it as undetermined as before. Not until the debates between Calhoun, Hayne, and Webster was the theory of indivisible sovereignty put forward. Until the Civil War the doctrine of divided sovereignty survived in American political thought, receiving its last application from Buchanan when he declared that, while the states had no legal right of secession, the national government had no constitutional power to prevent such action. If the people in 1789 had understood that sovereignty cannot be divided and that they must choose between national sovereignty and state sovereignty, they would probably have chosen the latter. By 1861 they would have made the opposite choice. Changed conditions in America and the decisions of the Supreme Court under Marshall developed the theory of national sovereignty.

While the framers of the Constitution viewed the Union as one from which its members could not legally secede, assertions of the ethical and constitutional rights of states to withdraw were soon made. In the first Congress, Butler of South Carolina threatened secession. In 1795 plans for separation were put forward in western Pennsylvania and Kentucky, though these were expressions of frontier freedom rather than of state sovereignty. In 1795 a series of articles in the *Connecticut Courant* urged a separation of the Northern and Southern states. In the Kentucky and Virginia Resolutions of 1798-1799 the right of secession was implied and its possibility suggested. Legal analyses of the Constitution appeared in

<sup>48</sup> In *The Federalist Farmer*.

which the view was taken that the Constitution was a compact among the states, which retained their right to withdraw from it. St. George Tucker wrote <sup>49</sup> that each state was "still a perfect state, still sovereign, still independent, and still capable, should the occasion require, to resume the exercise of its functions, as such, in the most unlimited extent." Rawle asserted <sup>50</sup> that "the States may wholly withdraw from the Union," if done by the people in constituent assembly. In 1811 Quincy declared in Congress that if Louisiana was admitted as a state the Union would be dissolved, the states would be released from all moral obligations to remain in it, and would be justified in separation, violent if necessary.<sup>51</sup> At the time of the War of 1812 there were many threats of secession in the New England states, and the possibility of a dissolution of the Union was discussed in the Hartford convention. The Connecticut legislature solemnly resolved that "the state of Connecticut is a free, sovereign, and independent state; that the United States are a confederacy of states; that we are a confederated and not a consolidated republic." During the discussions over the extension of slavery to the territories that led to the Missouri Compromise, civil war and disunion were threatened. Opposition to the tariff on the part of the South led to the nullification program of South Carolina in 1828, where the theory that the Union was a compact of sovereign states was again put forward. Opposition to the annexation of Texas led to declarations in New England that such an act would justify secession; on the other hand, in the South the threat "Texas or disunion" was frequently heard.

The earlier assertions of States' rights were put forward by the party out of power, or by a minority group which felt that its interests were being threatened by the expanding power of the national government. It was not the theory of any particular party or section.<sup>52</sup> As Alexander Johnston said: "Almost every state in the Union in turn declared its own sovereignty, and denounced as treasonable similar declarations in other cases by other

<sup>49</sup> In his "Commentaries on Blackstone," an appendix to the first volume of Blackstone's *Commentaries* in 1803.

<sup>50</sup> In his *View of the Constitution* (1825).

<sup>51</sup> See his speech of Jan. 14, 1811, in A. Johnston, *American Orations* (1927), I, 180-204.

<sup>52</sup> For numerous excerpts from speeches, newspapers, and party resolutions in all sections expressing the doctrine of states' rights, see S. D. Carpenter, ed., *Logic of History, Five Hundred Political Texts; Being Concentrated Extracts of Abolitionism*; also, *Results of Slavery Agitation and Emancipation* (1864).

states." From the psychology of politics it was natural that the party in power should feel that the Constitution, however broadly construed, was safe in its keeping; while the minority party should be convinced that popular welfare demanded that the majority should be limited to a narrow exercise of governmental authority. In practically every case,<sup>53</sup> however, the national authority was able to maintain its supremacy.

After 1828 the doctrine of States' rights began to be more definitely the theory of the South, first because of its opposition to the tariff policy<sup>54</sup> of the government, later because of the attack on slavery. The issues that had earlier divided the East and the West, such as the navigation of the Mississippi and internal improvements, had practically disappeared, and attention was concentrated on controversies that sectionalized the country North and South. The South was also becoming hopelessly the minority section, because of the growing population and wealth of the North. A new division of parties, following this alignment, was bound to appear. Occasional reversions to the States' rights doctrine appeared in the North. The passage of the Fugitive Slave Act in 1850 led many Northern states to pass "personal liberty laws," designed to obstruct the federal act, and brought them dangerously near the nullification doctrine. As late as 1852 the New Jersey legislature declared that the Constitution was "a compact between the several states." In general, however, the States' rights theory received its most important development in this period at the hands of the Southern legislatures.

The nature of this cleavage and a definite statement of the two opposing theories of American sovereignty appeared in the debates between Hayne and Webster in 1830. Starting with a discussion of Foote's resolution to limit the sale of public lands in the Western states, the speakers soon abandoned the subject of the resolution and launched into a controversy over the nature of the American Union.<sup>55</sup> Hayne condemned the North for its selfish policy of sectionalism, as shown especially in the tariff legislation, and stated that there was a way under the Constitution by which a state might rid itself of an oppressive act of Congress. He elaborated the doctrine of Calhoun's *Exposition and Protest*. The "people" who had adopted the Constitution were not the people

<sup>53</sup> The only important exception was that of Georgia in dealing with the Creek and Cherokee Indians.

<sup>54</sup> See *Great Debates of American History*, V, 92.

<sup>55</sup> *Congressional Debates*, 21st Congress, 1st sess., VI, Pt. I, 58-93.

of the United States acting in a collective sovereign capacity, but were the people acting as citizens of the several states. Madison's statement that the Constitution was "a compact to which the states are parties" was repeated. The national government was merely the agent of the states, which possessed full sovereignty. The national government was not the final judge of its powers in either the legislative or the judicial branch, since that would reduce the states to the position of mere "corporations." Federal law was subject to review and even to annulment by the states, since they were the sovereignties that had created the national government and had conferred upon it certain specific and limited powers. For the first time in Congress the theory of state sovereignty was openly asserted.

Webster, in his reply to Hayne, insisted that the Constitution was the authoritative charter of government for the United States, that it was created by the people of the United States and might be amended by them, but that it must be obeyed as the supreme law of the land by the officials of the states. He showed that the assumption by any state of the right to annul a federal law would reduce the Constitution to a "rope of sand," and lead to the anarchy of the Confederation period, which the creation of the Constitution had been intended to prevent. The Constitution, he said, was not a compact created by the states, but a fundamental law established by the people of the United States.<sup>56</sup> From it both federal and state governments derived their powers. This discussion brought the issue squarely before the country. The difficulty long concealed by the complicated system of American government and by the ambiguous use of the term *people* became evident. The compromise theory of divided sovereignty was rejected by both North and South, and the issue stood squarely between the exponents of state sovereignty and those who believed in the sovereignty of the Union. Jackson, as President, after careful thought and counsel, took his stand on the side of the nationalists in his determination to maintain the authority of the Union, although he had no sympathy with their plans of economic and financial centralization. In reply to the nullification program of South Carolina, he issued a proclamation (December 11, 1832) in which he declared the doctrine of nullification to be "incompat-

<sup>56</sup> "The Constitution Not a Compact Between Sovereign States," in *Works*, III, 449. Webster drew his constitutional arguments mainly from Story's *Commentaries*.



ible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was framed." Jackson's influence with the new democracy of the West had much to do with the attitude of that section on the doctrine of States' rights.

Efforts were still made to reach a compromise theory. Judge Story put forward the doctrine<sup>57</sup> that there were two kinds of sovereignty. One was sovereignty in its broadest sense—the "supreme, absolute, uncontrollable power, the *jus summi imperii*, the absolute right to govern." This sovereignty was subject to no superior; it was one and indivisible. The other was sovereignty in a limited sense, exercised as governing power. It consisted of "such political powers as in the actual organization of the particular state or nation are to be exclusively exercised by certain public functionaries without the control of any superior authority." In this sense, sovereignty might be unlimited as to some objects and restrained as to others. It might be divided between the states and the nation, subject to the original higher sovereignty. Story drew his materials freely from *The Federalist* and from Blackstone, and referred repeatedly to Hamilton and Marshall. From English constitutional theory and common law he derived his belief in a strong and efficient state with coercive sovereignty, and in the necessity of loyalty on the part of subjects. From the Federalists he took the fear of legislative encroachment, the belief in checks and balances, and the dislike of factions. He interpreted the Constitution according to the letter of the document, and asserted that the authority of the Constitution was derived from the individual citizens of the United States, acting in their sovereign capacity, not through the states. Story's work continued the legal tradition and the lawyer's custodianship of the fundamental law, and its conservative and nationalistic spirit made it a classical authority throughout the North.

President Jackson also took somewhat of a compromise position in his Proclamation to the people of South Carolina<sup>58</sup> in 1832. He discussed the nature of the contract upon which the Union was based and emphasized that the one-sided repudiation of a contract was unreasonable and was contrary to the theory of contract in private law and to that of the social contract on which

<sup>57</sup> *Commentaries on the Constitution*, Secs. 207-208 (1833).

<sup>58</sup> *Senate Doc. 30*, 22d Congress, 2d sess., pp. 78-92.

society rests. Just as the social contract was to be interpreted not by one citizen, but by the majority, so the agreement among the states must be interpreted by a majority of them and not by any one at its pleasure. Admitting that the Union was created by the voluntary agreement of the states, acting as such, he denied that any single state could refuse to obey it or depart from it without consulting the other states. Jackson followed the nationalistic tendencies of the West, and in spite of strong States' rights sympathies he rejected the theory of nullification. He was, however, no believer in an omniscient state: and he looked back to the Jeffersonian conception of the powers and duties of the federal government.

None of the compromise theories proved acceptable. The conflict between nationalism and States' rights, soon intensified by agitation over the slavery question, passed into an acute stage beyond the realm of compromise, and rigid dogmas of state sovereignty and of national sovereignty were formulated. The theory of state sovereignty, with its corollaries of nullification and secession, was first given definite form and statement. In the earlier period the States' rights doctrine was based on the prevalent theory of social contract. It was held that the Union was formed by a contract among the states, and that the states retained their natural right of revolution if oppressed. The general philosophy of the social contract among individuals was followed. Both the traditional contract theory and the doctrine of divided sovereignty were attacked by the Southern leaders in the latter period. Social contract was contrary to the logical basis of slavery; divided sovereignty made impossible the theory of secession. The political philosophy underlying the States' rights doctrine, in its later stages, was largely the work of Calhoun.<sup>59</sup> He definitely abandoned the time-honored hypothesis of a state of nature, preceding the formation of civil society by a social contract. In his opinion the natural state of man was social and political. He returned to Aristotle's dictum that man is a political animal. Government was not unnatural, nor an evil, nor a matter of human choice. It arose naturally from the social instincts of man, and was a ne-

<sup>59</sup> See his "Disquisition on Government" and "A Discourse on the Constitution and Government of the United States," in *Works*, Vol. I; also his speeches on the South Carolina Exposition (1828) in *Works*, Vol. III; on the Force Bill (1833) in *Works*, Vol. II; his reply to Webster (1833) in *Works*, Vol. II; and his speech on the Reception of Abolition Petitions (1837); in *Works*, Vol. IV. See also his "Correspondence," ed. by J. F. Jameson, in American Historical Association, *Annual Report*, II (1899).

cessity to regulate conflicts among individuals growing out of their selfish tendencies. This phase of Calhoun's theory represented the beginnings in America of the organic theory of the state,<sup>60</sup> created by the ideas of historical and, later, of biological evolution. In place of the mechanical conception of society as artificially created by human will, Calhoun believed in its natural development because of the immutable principles of human nature. Government, in turn, must be controlled by a constitution, in order to check its tendencies to abuse its power. The rulers must be made responsible in some way to the ruled. This was to be accomplished by a widespread suffrage, through which the citizens might select periodically their rulers, and by the influence of a widespread public opinion that controlled their actions.

There still remained the danger that the majority might oppress the minority; and Calhoun believed that, as political parties arose and government became more centralized, this tendency increased. The "tyranny of the majority" was made the basis of his political theory, and he found in the conditions of his time illustrations of this tendency: in the tariff policy of the North, and later in the attack on slavery. In place of a numerical majority, Calhoun proposed the doctrine of a "concurrent majority."<sup>61</sup> This was a new form of the check-and-balance theory, by which each interest or section in the country might be given a negative on the others. Governmental action would be conditioned upon the consent of a majority of the various interests, not upon the consent of a majority of individuals. Separate interests should possess a power of veto. This phase of Calhoun's theory suggests the more recent doctrines of pluralism and group representation. By this system Calhoun believed that a greater spirit of national unity would result, since there would be less danger of discrimination against a particular interest or section, and that a higher degree of liberty would be possible, since the oppressive action of the government could be prevented by the veto power of the various interests. "Instead of factions, strife, and struggle for party ascendancy, there would be patriotism, nationality, harmony, and a struggle only for supremacy in promoting the common good of the whole."

<sup>60</sup> This point of view had appeared earlier in America in Cooper's *Lectures on the Elements of Political Economy* (1826). He held that "the universal law of nature is force."

<sup>61</sup> Sometimes he called it the "constitutional majority," since he held that it was this negative check upon the unrestrained power of the government that made a constitution. On the "concurrent majority," see *Works*, I, 27 ff.

Calhoun admitted that his plan was complex, but replied that all free governments are of necessity complex in contrast to the simple government of an absolutism. He also admitted the difficulty of reconciling the conflicting interests of various groups, but argued that important questions should be settled by compromise and not by allowing the numerical majority to ride rough-shod over the minority opposition. His last words in the Senate proposed an amendment to the Constitution in which he had in mind a double executive, a Northern and a Southern President, each with a power of veto over legislation hostile to his section.

Calhoun's theory was intended to support his doctrine of nullification.<sup>62</sup> It would justify any state in rejecting a measure of the national government that it considered contrary to the Constitution. If, however, three-fourths of the states upheld the action of the national government, the opposing state must either yield or withdraw from the Union. The right of secession on the part of each state he considered to be absolute, since sovereignty resided in the states separately. Calhoun thus stood for the unquestioned right of secession and for a limited right of nullification for states that remained in the Union. He was completely opposed to the earlier theory of divided sovereignty. He argued that sovereignty in its nature is indivisible. "To divide is to destroy it." If sovereignty was not a unity it would not be sovereignty. No state could be partly sovereign and no Union could be formed composed of part-sovereign states, with a part-sovereign national government. The vital principle of the state was sovereignty, and it must be absolute and indivisible. Calhoun asserted that the states were originally sovereign and that they had never given up their sovereignty.<sup>63</sup> Since sovereignty could not be divided, the states must either be fully sovereign or possess no sovereignty at all. Calhoun declared the Constitution to be a contract to which the states were parties; but in his theory a contract was merely a legal agreement, not the "social contract" which the earlier thinkers had believed in. Accordingly, the only result of the contract that formed the Union was an agreement in law among the states; no new state could be formed by such process. In his theory the central government exercised such powers as the sovereign states had delegated to it, but these might at any time be recalled. The conclu-

<sup>62</sup> For Calhoun's interpretation of the Constitution, leading to nullification, see his *Works*, II, 197 ff.

<sup>63</sup> *Works*, I, 111 ff.

sion followed that the states at any time might assert their sovereign prerogative and withdraw from the Union. As Calhoun said, he "turned to the Constitution to find a remedy." He believed that if the Union were to be saved, it could only be by returning to its original form, from which it had so widely departed.

Calhoun admitted that the United States differed from the earlier Confederation in that it obtained its authority from the sovereign states, not from their governments, in that it had a more elaborate common government with larger and more carefully enumerated powers, and in that it acted directly upon individuals, not through the states. It was, therefore, a "more perfect union" between sovereign communities. He insisted, however, that no matter how large the powers of the central government, it was subordinate to the sovereign states from which all governments drew their power. The constitutional convention in each state was the ultimate source of authority. The United States was a "federal republic, not a nation." In seeking a constitutional defense for the threatened interests of the South, Calhoun drew from the two great sources of American constitutional theory. From the Jeffersonian Republicans he derived the familiar doctrine of States' rights in opposition to the principle of consolidation; from the Federalists he derived the doctrine of balanced powers. By combining these theories he formulated the principle of an additional check in the veto power of the states. The earlier division of powers, he held, needed a supplementary veto if the nice balance of the Constitution were to be maintained. Calhoun's theory was the most complete and elaborate formulation of the principles of the States' rights party, and his ideas dominated the South. They led logically to its secession and to the Civil War. Similar ideas were expressed by A. P. Upshur in his review of Story's *Commentaries*.<sup>64</sup> They found expression in the Constitution of the Confederate States, and were repeated at the close of the Civil War by Southern writers, such as Bernard J. Sage,<sup>65</sup> Alexander Stephens,<sup>66</sup> and Jefferson Davis.<sup>67</sup>

The Supreme Court, under Taney, in some of its opinions stated the doctrine that the authority of the national government was

<sup>64</sup> *Brief Inquiry into the True Nature and Character of our Federal Government* (1840).

<sup>65</sup> *The Republic of Republics, or American Federal Liberty* (1865). Sage wrote under the name of P. C. Centz.

<sup>66</sup> *A Constitutional View of the Late War Between the States* (1868).

<sup>67</sup> *The Rise and Fall of the Confederate Government* (1881).

derived from the sovereign states. In *Ableman v. Booth*<sup>28</sup> it asserted that "the Constitution of the United States, with all the powers conferred by it on the general government, and surrendered by the states, was the voluntary act of the people of the several States." Nevertheless, Taney, even in this case, emphatically upheld federal supremacy. While he favored a strict interpretation of federal powers and a liberal interpretation of the reserved powers of the states, he consistently opposed nullification and secession.

Many causes contributed to the growth, especially in the North and West, of a national sentiment in the United States that viewed the doctrine of state sovereignty with abhorrence. The successful existence of the Union for a half-century and the success of the federal government in enforcing its authority and its laws were creating a strong national tradition. The successful outcome of the War of 1812 and the war against Mexico stimulated American patriotism and national pride, in spite of bitter sectional opposition to both wars. The territorial expansion of the country and the optimistic faith in "manifest destiny" worked in the same direction. The vast area of public land, controlled by the national government, was a tremendous addition to its strength. New states carved from this territory entered the Union, owing everything to the national government and, save for Texas, having no tradition of independent state existence. The Western territory had been a bond of union in the time of the Confederation, and that fact left its stamp upon the attitude of the states formed from it. Foreign immigrants in increasing numbers came to America, and viewed themselves as citizens of the United States rather than as citizens of a particular state. They had no historic association with the particularistic point of view.

The growth of national sentiment in Europe, and the revolutions there which aimed at national independence or at national unity gave a stimulus to the same idea in America. The struggles of the Greeks, Poles, and Hungarians for national independence, and the beginnings of the demand for Italian and German unification gave evidence of the strength of the principle of nationality in world politics. The doctrine of "self-determination of nations" was one of the most conspicuous dogmas of the period. Just as the Revolution of 1830 in Europe gave a stimulus to social ferment in America, so the Revolution of 1848 furthered the national

<sup>28</sup> 21 *Howard*, 506 (1858).



spirit. The idealistic philosophy of the period <sup>69</sup> began to emphasize the organic unity of a nation and the value of national spirit and of national will. The historical and evolutionary point of view was beginning to influence the intellectual atmosphere of the times, and to emphasize the state as the highest form of social organism.<sup>70</sup>

Improvements in communication and transportation were binding the various parts of the country together; and the growth of inter-state commerce and the formation of large-scale business organization gave to industry, finance, and labor a national outlook. The formation of political parties, on national issues and with a national organization, acted as a unifying force, centered attention on national problems and elections, and decreased the importance of the states.<sup>71</sup> The long line of Supreme Court decisions under Marshall had given a liberal construction to the powers of the national government and had definitely asserted federal supremacy. While holding at times the divided sovereignty doctrine, the court had frequently asserted the sovereignty of the national government<sup>72</sup> and had consistently opposed the theory of states' rights. Not only had the court stated and enforced the supremacy of the central government in the exercise of its express and implied powers, but it had authoritatively maintained the principle that the settlement of all disputes as to the relative competence of the state and federal governments was placed finally in the hands of the supreme judicial organ of the federal power. Its officially declared views seemed to demonstrate the absolute sovereignty of the federal power so conclusively as to place that question outside the sphere of debatable political theory.

By 1850 the fundamental political philosophy upon which the American Union had originally been based had undergone important changes. In 1789 the general attitude toward the central government was one of distrust, if not of open hostility. Liberty was associated with local self-government; the states were the champions of the individual, the national government was their enemy. It was believed that the greater the power of the central government, the greater the danger to the freedom of the citizen. "Con-

<sup>69</sup> Especially that of Hegel. See his *Grundlinien der Philosophie des Rechts* (1821); *Philosophie der Geschichte* (1832).

<sup>70</sup> See the writings of Comte, Spencer, and Bluntschli.

<sup>71</sup> A. Johnson, "The Nationalizing Influence of Party," in *Yale Review*, XV, 283-292 (1906).

<sup>72</sup> See Marshall's decision in *Cohens v. Virginia* (1821), 6 *Wheaton*, 264.

solidated" government meant tyranny and oppression. This point of view had in large part disappeared by the middle of the century. Men were willing to trust the national government with larger powers; they were indeed beginning to evoke its aid on a large scale for purposes of regulation and for the promotion of general welfare. Each party that came into power had accepted the national point of view and had further expanded the national authority. The time was ready for the acceptance of a new theory of national sovereignty, and the first great champion of this doctrine was Daniel Webster.<sup>73</sup>

It is interesting to note the change in attitude of both Calhoun and Webster during the period of forty years when these men were bitter opponents in American politics. When they came into public life, at the time of the War of 1812, Calhoun was under the influence of the vigorous democracy of the West and for some years advocated measures and principles of a strongly nationalizing character. He was eager for war, advocated a tariff and internal improvements, and did all in his power to stimulate national feeling. Webster, representing the attitude of New England at that time, took a particularistic attitude, opposed the war, and attacked the extension of national power. Toward the end of the period, when the South was placed on the defensive by the tariff and slavery issues, Calhoun ceased to advocate a tariff and internal improvements; Webster became their advocate. Calhoun ceased to place national welfare before state interests; Webster came to think first of national union and greatness, Calhoun began to see a danger to freedom in too strong union; Webster saw liberty imperiled by the sovereignty of the states.

Webster grew up in the atmosphere of Federalist principles, under the influence of a blind worship of the Constitution. Unlike Calhoun, he had no general philosophic theory of the state; his doctrines were more purely legal and constitutional. Without giving attention to historical origins, he drew his arguments from the language of the Constitution itself, but he interpreted it, not in the light of the intentions of its framers, but in the new spirit that had arisen from a multitude of causes. He first gave adequate expression to the "slow results of time." What the Constitution was in 1789 was the foundation of Calhoun's argument. Webster, though he went back to the proceedings in the Convention and to the arguments of *The Federalist*, viewed these as subsidiary to the

<sup>73</sup> *Writings and Speeches of Daniel Webster* (National ed., 18 vols., 1903).

actual wording of the Constitution and to what it had come to mean. His first great argument on the Constitution was made before the Supreme Court in 1818 on the Dartmouth College case, but his great opportunity to stand forth as the exponent of national unity came in 1830 when the doctrine of nullification was proclaimed in South Carolina. In his debate in the Senate with Hayne,<sup>74</sup> he stated his theory on the major issues concerning the nature of the American Union: whether the Constitution was a contract, creating a league of sovereign states, or a supreme law, creating a supreme government in its own sphere; whether the Constitution was created by the states, or by their governments, or by the people of the United States; whether the separate states, as sovereigns, were the final judges of the powers conferred by the Constitution, or whether that power was vested in the appropriate organ of the federal government.

Webster retained in a general way the social contract background of American political theory which Calhoun rejected. He admitted that the Union was formed as the result of a contract, but he denied that the Constitution itself was a contract. It was a fundamental law. "The Constitution, sir, is not a contract, but the result of a contract; meaning by contract no more than assent. Founded on consent, it is a government proper. . . . The people have agreed to make a Constitution; but when made, that Constitution becomes what its name imports. It is no longer a mere agreement."<sup>75</sup> His theory was that the result of the agreement was an "executed contract." Once made, the agreement became a law. "When the people agree to erect a government and actually erect it, the thing is done and the agreement is at an end. The compact is executed, and the end designed by it is attained."<sup>76</sup> The original contract was of the social-compact type which created a body politic. Calhoun argued that the result of a contract was a contract; Webster, that it was a law. The contract that Webster had in mind, however, was not one among the states. He attempted to show from the language of the Constitution that the Union was formed by contract or agreement among the individuals of the entire United States. By "the people of the United States" he understood the people of the whole Union, not of the states separately. "It is established by the people of the United States. It

<sup>74</sup> A. Johnston, *American Orations* (1927), I, 233-302.

<sup>75</sup> *Writings*, VI, 201.

<sup>76</sup> *Works* (1851 ed.), III, 468. This was the argument of Story in his *Commentaries*, Sec. 339.

does not say by the people of the several states. It is as all the people of the United States that they established the Constitution." Accordingly, he viewed the Union, not as a treaty relation among sovereign states, but as the indissoluble agreement of the collective sovereign people. The Constitution was not a contract, but the supreme law of the land. No state had the right to question its supremacy, nullify its provisions, or withdraw from the Union.

Like Calhoun, Webster denied that sovereignty could be divided. Unlike Calhoun, who located ultimate sovereignty in the people of the states, Webster located it in the people of the United States. Both agreed that the federal government possessed limited powers, but Calhoun asserted that the sovereign states should decide whether or not Congress exceeded its powers in the passage of any law; Webster insisted that the federal government was the final and conclusive judge of its own powers. Only in that way could the Constitution be supreme. If each state decided for itself, then "what is law in one state is not law in another. Or, if the resistance of one state compels an entire repeal of the law, then a minority, and that a small one, governs the whole country."<sup>77</sup> Webster characterized nullification as "half allegiance and half rebellion" and argued that it would lead to revolution. The truth of this argument was proved a generation later when secession replaced nullification. Calhoun interpreted the Constitution from the standpoint of international law; Webster, from that of constitutional law. To Calhoun, secession at its worst was a moral breach of international law; to Webster, it was a criminal violation of constitutional law. Calhoun looked back to a condition that once existed; Webster looked forward to the increasing influence of nationalizing conditions. Calhoun's arguments had greater force of logic and of law; Webster's strength lay in identifying his arguments with the strengthening current of public sentiment created by forces of American nationality becoming conscious and seeking expression. While Calhoun's interest in the maintenance of slavery was largely responsible for his political theory, Webster was not an abolitionist. He disliked slavery, and attacked the slave trade and the extension of slavery; but he was willing to compromise with the institution itself;<sup>78</sup> if thereby he could secure his greater purpose, the integrity of the Union.

<sup>77</sup> Webster's *Writings*, VI, 196.

<sup>78</sup> Especially in his later years. In 1833 he opposed Clay's Compromise and declared that "the time has come to test the strength of the Constitution and the government." In 1850 he was willing to compromise and not forbid

An impetus to the nationalist movement of this period was given by the writings of Francis Lieber,<sup>79</sup> a liberal German, who came to America in 1827 and who founded the teaching of Political Science in American universities. His works were the first systematic treatises in America on political theory, written primarily from a non-controversial point of view, and from the standpoint of a student of politics rather than that of one primarily engaged in practical political affairs. They mark the beginning of the influence exerted on American political thought by writers in the universities.<sup>80</sup> Lieber was strongly influenced by the rising spirit of nationalism in Germany and by the German philosophy of the organic and personal nature of the state as a crystallization of national spirit. He brought to the study of political theory a more thorough knowledge of history and a broader comparative view of political institutions than was possessed by most writers of the period. Like Calhoun, he rejected the old individualistic doctrine of natural rights and social contract. In his opinion the state of nature had no basis in fact. The social contract origin of the state was an artificial and inadequate explanation. Man was essentially a social creature; social existence arose naturally and spontaneously from the essential nature and needs of mankind; the state was a necessary and desirable result of the necessity of individuals to recognize mutual rights and duties.<sup>81</sup>

While Lieber held to a modified doctrine of natural law, creating what he called "primordial rights," he did not interpret these rights in the eighteenth century sense. In his opinion, natural rights were those that could be deduced from the essential nature of man. Since man existed as a human being, he possessed such inalienable rights as were inherent in his nature and in the fact of his existence. Lieber placed far more emphasis on the sovereignty of the state. Sovereignty he defined as "the right, obligation, and power which human society or the state has to do all that is necessary for the existence of man in society." "It is the basis of all

slavery in the new territories. He believed that slavery would not be successful in any case in these areas, and said that he "would not take pains uselessly to reaffirm an ordinance of nature, nor to re-enact the will of God."

<sup>79</sup> *Manual of Political Ethics* (1838-1839), *Legal and Political Hermeneutics* (1839), *Civil Liberty and Self-Government* (1853); *Miscellaneous Writings* (2 vols., 1881), especially "What is Our Constitution—League, Pact or Government?"

<sup>80</sup> Some important contributions had already been made by teachers of constitutional law in the law schools.

<sup>81</sup> *Political Ethics*, I, 288 ff.

derived, vested, or delegated powers, the source of all other political authority, itself without any source, imprescriptible in the nature of man.”<sup>82</sup> It was the vital principle of the state, inseparable from its existence. It belonged to the state in its organic capacity. It did not rest upon a contract made by the people but upon the organic unity of the nation in the state. It grew up naturally among a homogeneous population, inhabiting a coherent territory, and having a common tradition and a consciousness of a common destiny.<sup>83</sup> It manifested itself in a common public opinion which expressed itself in the form of law, and which possessed ultimate power. “Public opinion is the continued sovereign action of society.”<sup>84</sup> This sovereignty could not be divided, and it lay in the nation itself.

Lieber denied, however, that sovereignty was absolute or unlimited. Absolute power, which presupposed the right to absolute obedience, could not be claimed by any human power. Despotism was despotism, whether it rested on the authority of an absolute ruler or on that of an uncontrolled popular government. *Vox populi* could not be considered as *vox Dei*.<sup>85</sup> Lieber was a firm believer in the value of civil rights, protected from encroachment on the part of the government. He said: “Liberty applied to political man practically means, in the main, protection or checks against undue interference, whether this be from individuals, from masses, or from government.”<sup>86</sup> His praise of Anglican liberty was based on the fact that it emphasized the civil rights of man, in contrast to Gallican liberty, which aimed at the political rights of man. Lieber’s work shows many traces of hostility to French ideas and institutions, especially to their imperialistic and centralizing tendencies. He believed that the idea of federalism was the “chief American contribution to the common treasures of political civilization.”

Lieber’s doctrine, which glorified the nation as a real existence, an actual entity to which supreme power was attributed, added much strength to the cause of the Union. It carried the argument back of the Constitution and of governmental forms into the nation itself as the real possessor of sovereignty. On this

<sup>82</sup> *Political Ethics*, I, 216.

<sup>83</sup> *Miscellaneous Writings*, II, 228.

<sup>84</sup> *Political Ethics*, I, 219-226.

<sup>85</sup> *Ibid.*, p. 181; *Civil Liberty and Self-Government* (3d ed.), p. 408.

<sup>86</sup> *Civil Liberty and Self-Government*, p. 24.



basis the Unionists finally rested their cause. Ultimate sovereignty belonged to the Union, the great organism above all individuals and above all the separate states. It was created, not by the agreement of the "people" of either state or nation, nor by a contract among the states, but by the gradual and unconscious growth of the national spirit. By applying German liberalism to American constitutionalism, Lieber remodeled the earlier Federalist doctrines to accord with the needs of an imperialist generation. His work marked the beginning of the swing away from the natural rights philosophy and toward the conception of an engrossing political state. His organic conception of the national state fell in admirably with the centralizing tendencies that followed the Civil War.

Lieber's theory of the nature of sovereignty and the state also tended to break down the earlier individualistic doctrines and to justify an expansion of governmental powers. In the Revolutionary period, it was held that the state should limit its activities to a minimum. It should protect the life, liberty, and property of its citizens, but do nothing more. Lieber held that it was the duty of the state to do for man what man cannot do alone, what he ought not to do alone, and what he will not do alone."<sup>87</sup> It was not limited to the negative function of preventing interference, but it may devote its energies also to the promotion of general welfare. Lieber's theory, which glorified the state as the expression of national will, was quite willing to entrust the state with large powers. In this sense it was in harmony with the growing socialistic tendencies toward government regulation and control. His writings also gave some stimulus to the idea that the Teutonic peoples were the political peoples *par excellence*, that they showed superior genius in government, and had worked out a more satisfactory conception of liberty.<sup>88</sup> Each nation had its peculiar genius; that of the Teutonic peoples was in the field of government, law, and liberty. This idea was later expanded in America by J. W. Burgess, who was influenced by the teaching of Bluntschli in Germany.

<sup>87</sup> *Political Ethics*, I, Ch. V.

<sup>88</sup> See his contrast between "Anglican liberty" and "Gallican liberty," in *Civil Liberty and Self-Government*, Chs. V, XXIV. Lieber did not, however, have as high an opinion of the German political genius as later writers. See *Civil Liberty and Self-Government*, footnote on page 39.

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## CHAPTER X

### POLITICAL THEORY OF TERRITORIAL EXPANSION

#### 1. MANIFEST DESTINY

The United States has always been an expansionist nation, but not always consciously. Before 1830 there was but little imperialistic sentiment in our westward expansion. Transfer of territory was considered a natural incident of warfare, and colonization seemed a part of the advance of civilization. But the early acquisitions, such as Louisiana and the Floridas, were not deliberately sought by Americans as a means of extending their national power. Before Louisiana was unexpectedly offered to the United States, few persons in America anticipated the acquisition of any territory west of the Mississippi. Even after the Louisiana Purchase, Jefferson regarded it as extremely doubtful whether it would be possible to maintain one government over so great an extent of country, and spoke cheerfully of the possibility of an Atlantic and a Mississippi republic in friendly rivalry. He was convinced that it would be impracticable to extend our government over the Oregon country. At the time of the Oregon boundary controversy he stated that "it will be best for both the Atlantic and Pacific nations, whilst entertaining the most friendly relations, to remain independent, rather than be united under one government."<sup>1</sup> Even Benton, who was later the most ardent champion of expansion, stated in 1825 that "this republic should have limits" and fixed the Rocky Mountains as an "everlasting boundary."

At the time of the American Revolution there was some sentiment in America that favored the acquisition of Canada. It was said that "we could never have a real peace with Canada or Nova Scotia in the hands of the English." In general, however, Americans were satisfied with the retention of Canada in British hands. At the time of the War of 1812 there was a revival in the United States of interest in the acquisition of Canada. Members of the House of Representatives urged as an argument for taking up

<sup>1</sup> *Writings*, III, 533.

arms against England that "we could deprive her of her extensive provinces lying along our borders to the north." The idea of "manifest destiny" was stated by one member as follows: "The waters of the St. Lawrence and the Mississippi interlock in a number of places, and the Great Disposer of Human Events intended those two rivers should belong to the same people." The expansionists of 1812 even cast longing eyes at Mexico. One writer exclaimed: "Behold the empire of Mexico. Here it is that the statesmen shall see an accession of territory sufficient to double the extent of the republic." The early expansionists, however, were divided. Southern planters had misgivings over increasing the power of the North through expansion in Canada, and Northern farmers opposed the acquisition of further plantations on the Gulf of Mexico. At the close of the war, the expansionist fervor of the "War Hawks" was for a time checked.

After 1830 a new spirit appeared in the attitude of Americans toward their future on the continent. The process of American expansion was described by Lucas Alaman, Mexican Secretary of Foreign Affairs, in a report to the Mexican Congress in 1830, as follows: "They commence by introducing themselves into the territory which they covet, upon pretense of commercial negotiations, or of the establishment of colonies, with or without the assent of the government to which it belongs. These colonies grow, multiply, become the predominant party in the population, and as soon as a support is found in this manner, they begin to set up rights which it is impossible to sustain in a serious discussion, and to bring forward ridiculous pretensions, founded upon historical facts which are admitted by nobody . . . These extravagant opinions are, for the first time, presented to the world by unknown writers, and the labor which is employed by others, in offering proofs and reasonings, is spent by them in repetitions and multiplied allegations, for the purpose of drawing the attention of their fellow-citizens, not upon the justice of the proposition, but upon the advantages and interests to be obtained or subserved by their admission . . . These pioneers excite, by degrees, movements which disturb the political state of the country in dispute."<sup>2</sup>

Aside from the economic motives and the love of adventure that inspired the pioneer movements, the dominant ideal was a belief in democracy and a desire to expand it. Our sympathy with the attempt of the Latin-American nations to win their independence

<sup>2</sup> *House Executive Docs.*, 25th Congress, 2d sess., No. 351.

was based largely on a desire to extend republican institutions in the New World. The westward expansion of the United States had, as one of its prime motives, the desire for equality of opportunity, in contrast to the class distinctions of the older settlements. The belief was widespread that an aristocracy ruled the country and that its professed support of democracy was intended to delude the people. The West asserted that equality of opportunity in occupying public lands was denied it by the East. They believed that the West was the land of the future and that the new democracy there arising would assure a political and social utopia. After 1830 the inspiration of nationality was added and the ideal of expanding national territory became a conscious motive. The belief in manifest destiny, in territorial expansion to a continent-wide national unity, led to a desire to increase national power by territorial acquisition. This feeling was especially strong in the West, where Indian fighting, forest felling, and constant change and movement developed a belligerency and a largeness of outlook with regard to the nation's territorial destiny. As the pioneer, widening the ring of his clearing in the wilderness, had visions of a future city, so the West as a whole had optimistic ideals of the future of the common man and the grandeur and expansion of the nation. This motive underlay our annexation of Texas, of the territory acquired by the Mexican War, and of that secured by the settlement of the Oregon controversy. The peculiar destiny which Americans, after independence, believed to consist in the spreading of democratic ideals came later to include the idea of territorial greatness. Militant patriotism, reinforced by a carefully nurtured hatred of England as the hereditary enemy, strengthened the American belief in the superiority of her civilization and government and in the marvelous promise of her future.

Before 1830 there was little interest in the expansion of our national domain. When a bill for the military occupation of Oregon was introduced in Congress in 1825 a few favored it, more opposed it, and the great majority took little interest. Senator Benton, one of the earliest imperialists, favored the bill. "It is time," he wrote, "that western men had some share in the destinies of this republic;" and he outlined the states to be laid off "from the center of the valley of the Mississippi to the foot of the shining mountains."<sup>3</sup> Even he dared not profess the belief that Oregon could ever be admitted to the Union. He asserted that

<sup>3</sup> Meigs, *Benton*, pp. 98-99.

"the greatest of all advantages to be derived from the occupation of this country is in the exclusion of foreign powers from it." He believed that if it were settled by Americans it would ultimately become independent, and that America would be proud of having aided "the erection of a new Republic, composed of her children, speaking her language, inheriting her principles, devoted to liberty and equality, and ready to stand by her side against the combined powers of the old world." Benton even looked forward to the contact of the Americans with the Orient, saying that "science, liberal principles in government, and the true religion might cast their lights across the intervening sea. The valley of the Columbia might become the granary of China and Japan, and an outlet to their imprisoned and exuberant population."<sup>4</sup> Tucker of Virginia argued that settlement "marches on, with the increasing rapidity of a fire, and nothing will stop it until it reaches the shores of the Pacific."<sup>5</sup> The chief opponent of the proposal, Dickerson of New Jersey, stated: "We have not adopted a system of colonization, and it is to be hoped we never shall. Oregon can never be one of the United States. If we extend our laws to it, we must consider it a colony. . . . The Union is already too extensive." He argued that because of distance, at the rate of travel of that day, a Representative from Oregon would have only "a fortnight to rest himself at Washington before he should commence his journey home." Tracy of New York doubted the value of Oregon, and declared that "nature has fixed the limits for our nation; she has kindly introduced as our western barrier, mountains almost inaccessible, whose base she has skirted with irreclaimable deserts of sand."<sup>6</sup>

Definite beginnings of a popular belief in the further territorial expansion of America appeared in connection with the Canadian rebellion of 1837. Canadian leaders, professing their admiration for American institutions and claiming that they were fighting for self-government, appealed to the "sympathy and generosity of a liberty-loving people" for aid in overthrowing the Canadian government. Many American adventurers joined the effort to "redeem Canada," and many American idealists welcomed the opportunity to spread American political principles. The emotion of territorial expansion began to be felt, and many thought that the revolution might result in the admission of Canada into the

<sup>4</sup> *Register of Debates*, I, 712.

<sup>5</sup> *Annals of Congress*, 17th Congress, 2d sess., p. 422.

<sup>6</sup> *Ibid.*, p. 590.



Union. In public meetings and in the press the ideals of democracy and of expansion were expressed, although the government at Washington officially condemned the excitement. The Canadians proclaimed that Great Britain must defend monarchical institutions and territory against republican heresies. "The enemy of the British Constitution," said Lieutenant-Governor Head, "is its low-bred antagonist, democracy, in America." Complicated with disputes over the Maine boundary, the feeling became increasingly powerful in America that our destiny ran counter to that of England on this continent. In 1839 Cushing said in Congress: "Unless this all-grasping spirit of universal encroachment on the part of Great Britain be arrested, either by moderation in her councils, or by fear, the time must and will come when her power and ours cannot coexist on the continent of North America." By the late thirties a genuine passion for expansion and a demand for territory and power were nation-wide.

This interest was soon turned to the southern border. Various motives were combined in the American desire for Texas: the impulse of the western movement into new lands, the interest of the Southerners in opening up new territory to slavery, and the call of manifest destiny. When Texas declared her independence in 1836 and desired annexation to the United States, the offer was declined, but the migration of Americans into the new country increased and strengthened annexation sentiment both in Texas and in the United States. To both England and the United States the future of Texas was of importance. England encouraged Texan independence because she hoped to free herself from dependence on American cotton and to set a barrier to further American expansion. Brougham made speeches in the House of Lords denouncing the "hideous crime of breeding negroes," and members of Parliament openly stated that "England must maintain her ascendancy in Texas." The United States hesitated to annex Texas, lest it involve us in war with Mexico.<sup>7</sup> Besides, the North opposed the admission of a large slave area from which a number of states might be created.<sup>8</sup> Many feared that it would whet the desire to annex Canada and Mexico, that it would burden us with a large

<sup>7</sup> See the "Raleigh Letter" of Henry Clay in which he stated that the annexation of Texas would be equivalent to a declaration of war on Mexico and an act transcending the power of the executive. *Daily National Intelligencer*, Washington, Apr. 27, 1844.

<sup>8</sup> W. E. Channing, *A Letter to the Hon. Henry Clay, on the Annexation of Texas to the United States* (1837).

Texan debt, and that it would encourage speculation in Texan lands. John Quincy Adams argued in the House that a treaty of annexation could not be made "under the Constitution." Enthusiasm for annexation was strong in the South, which was desirous of increasing its political influence; and the sentiment of manifest destiny as well as that of national jealousy of England was appealed to. Clay stated that "if any European nation entertains any ambitious designs upon Texas, such as that of colonizing her, or in any way subjugating her, I should regard it as the imperative duty of the government of the United States to oppose to such designs the most firm and determined resistance, to the extent, if necessary, of appealing to arms to prevent the accomplishment of any such designs."<sup>9</sup> The Washington *Madisonian*, the organ of President Tyler, stated that if England interfered in Texas, the whole American people "would rise like one vast nest of hornets." Calhoun in particular raised the cry of British interference,<sup>10</sup> and the arguments of the inevitable progress of democratic ideals and the supremacy of Anglo-Saxon peoples over inferior races were widely used. Superior blessings were claimed for America and these should be carried into the new territory. Polk's election settled the future of Texas, which was admitted by a joint resolution of both houses of Congress to avoid the issue as to whether or not a treaty of annexation was constitutional, and because a two-thirds majority in favor of annexation could not be secured in the Senate. Great Britain abandoned her hope of a barrier state, but believed that the great extension of American territory would destroy the Union.

As the Oregon controversy became more acute, and rabid American orators demanded "fifty-four forty or fight," Southern statesmen, satisfied with Texas and opposing Northern expansion, tried to quiet the expansionist sentiment they had aroused. Senator McDuffie of South Carolina, speaking of Oregon, said: "I would not give a pinch of snuff for the whole territory." Even in the North there was some opposition to further expansion. Horace Greeley, in the New York *Tribune*, argued that the Rocky Mountains formed the natural western boundary. In general, American sentiment favored expansion; and the dogma, "The finger of God never points in a direction contrary to the extension of the glory

<sup>9</sup> *Daily National Intelligencer*, Washington, April 27, 1844.

<sup>10</sup> See his letter to Richard Pakenham, English minister to the United States, in *Works*, V, 333-339.

of the Republic," was frequently quoted in press, platform, and pulpit. Enthusiastic conventions in the Middle states demanded that we assert the Monroe Doctrine against Great Britain, build forts from the Missouri to the Pacific, and take possession of the whole of Oregon. The New York *Herald* stated that "our march is onward for centuries to come, still onward—and they who do not keep up with us, must fall behind and be forgotten." The *Evening Post* said that "with the exception of the *Tribune* . . . there is not a press in the Union which does not say Oregon is ours and must be maintained." While England and the United States finally agreed on the forty-ninth parallel as the Oregon boundary, there were many in the United States who desired war with both England and Mexico, and looked to the acquisition of the entire continent by the United States. The New York *Herald* stated: "The destiny of the Republic is apparent to every eye. Texas annexation must be consummated, and the immediate results of that event may only precipitate the subjugation of the whole continent, despite of all the opposing efforts of the despotic dynasties of Europe." The *Washington Union*, the paper of the administration, asserted: "The march of the Anglo-Saxon race is onward. They must in the event accomplish their destiny—spreading far and wide the great principles of self-government, and who shall say how far they will prosecute their work?"

By the middle of the century expansion had become a national conviction; it was widely believed that the American continents would become united under our flag. Buchanan announced to Congress in 1858: "It is beyond question the destiny of our race to spread themselves over the continent of North America, and this at no distant day should events be permitted to take their natural course. The tide of immigrants will flow to the south, and nothing can eventually arrest its progress." This belief that destiny indicated our line of march was not, however, imperialistic. Americans believed in the universal applicability of republican institutions; the Spanish Americans were to be incorporated into the Union, not be subject to it. Neither was it militaristic. Seward asserted that he "would not give one human life for all the continent that remained to be annexed"; and Buchanan, the most ardent of expansionists, saw no connection between a policy of expansion and military preparedness. Destiny would furnish her own instruments, chief of which would be the peaceful infiltration of American immigrants.

After the Mexican War, which added the Southwest to the United States, the emotion of manifest destiny reached great heights. The discovery of gold in California in the very month in which the treaty was signed by which it became American territory, was viewed by many as a providential confirmation of manifest destiny and a justification of the acquisition of the region. Clay in 1850 said: "Our country has grown to a magnitude, to a power and greatness, such as to command the respect, if it does not awe the apprehensions, of the powers of the earth, with whom we come into contact." This was the period of greatest national egotism; and America claimed for herself leadership in the world of ideas and saw possibilities of great power among the nations of the earth. Attention was turned toward the construction of a Panama Canal and toward the extension of our interests in Central America and in Cuba. Active part was taken in the opening up of China and Japan, and the basis was laid for our future interests in the Orient. In campaigning for Lincoln throughout the West in 1860, Seward proclaimed that the American frontier would be pushed to the Arctic Ocean, that Canada would be annexed, that the Latin-American republics would become a part of our glorious confederation, and that Mexico City would ultimately be the capital of the American empire. The expansion craze was checked, however, by the political difficulties in the United States growing out of the slavery controversy, and the Civil War put an end to the clamor. The purchase of Alaska was referred to as "Seward's Folly" and awakened little enthusiasm. For thirty years after the Civil War the United States devoted itself to industrial development and made no further territorial progress. Not until the war with Spain in 1898 was the doctrine of manifest destiny, in a new form, revived.

The territorial expansion of the United States, largely the result of the ideals of democracy and nationality, in turn gave a further stimulus to these ideals. The control of the new areas by the national government under the territorial system, and the gradual admission of new states, carved from this territory, which owed their existence to the national government and which, with the exception of Texas, had no tradition of state sovereignty, strengthened the national idea and further weakened the doctrine of states' rights. The public land policy of the government, which disposed of the new lands on easy terms and in small holdings, strengthened the democratic idea, by making it easy for large numbers of persons to acquire property in land, by hastening the

settlement of the Western country, and by stimulating immigration from the poorer classes of Europe. Many important political results followed the fulfilment of our manifest destiny in extending our continental domain from ocean to ocean.

## 2. FOREIGN POLICY DURING THE DEMOCRATIC PERIOD

After 1815 diplomacy ceased to shape American politics; after 1830 politics began to shape our diplomacy. Diplomatic appointments, made for the purpose of paying political debts, reflected the general tendency of politics to rely on mediocrity. Our Secretaries of State, who in the earlier period had been men of distinction, and who had found the office the best stepping-stone to the Presidency, were in general colorless. Men unfamiliar with European conditions were sent abroad to represent the interests of the United States. When a President wished to gain applause, he appointed an author, like James Fenimore Cooper or Washington Irving. Henry Wheaton<sup>11</sup> was the only diplomat seriously interested in international relations. Our policy of isolation and the disappearance of most of the troublesome international controversies of the earlier period enabled the Americans to turn their attention to internal development and expansion, and to domestic issues. Considerable progress was made in furthering American commerce, but this was made easy by the fact that our commerce was largely non-competitive and universally desired.

The foreign policy of the United States during the period from 1830 to 1850 was concerned mainly with our relations to Mexico and to Great Britain. With the former, difficulties increased and feeling became mutually more hostile until a war resulted; with the latter, many problems were adjusted and relations became more friendly. Senator Benton stated that "the name of Mexico, the synonym of gold and silver, possessed always an invincible charm for the people of the western states." The existence side by side of two nations, with widely different civilizations, yet with important economic relations, created some of the most difficult problems of American foreign policy. The demoralization of Mexico and the aggressive expansion of American interests led naturally to a century of misunderstanding and bad feeling. Mexico was one of the first of the Latin American republics to be recognized

<sup>11</sup> See his *Elements of International Law* (1836); *History of the Law of Nations* (1845).

by the United States, and our relations with her opened in a burst of generous enthusiasm and friendship. But almost from the beginning controversies arose.<sup>12</sup> Attempts to fix boundary lines led to delay and insincerity on the part of Mexico and to bullying on the part of the United States. Revolutions and ferment in Mexico made a consistent policy on the part of either nation difficult. American settlers pushed into lands claimed by Mexico and began the agitation for independence and annexation that led to the creation of Texas.

As early as 1825 President Adams urged Mexico to sell to the United States the territory between the Sabine and Rio Grande, stating that "these immigrants will carry with them our principles of law, liberty, and religion and, however much it may be hoped they might be disposed to amalgamate with the ancient inhabitants of Mexico, so far as political freedom is concerned, it would be almost too much to expect that all collisions would be avoided on other subjects." Many adventurers were drawn to Texas by the prospect of military glory and of political advancement in the conflict that was already foreseen. Rigid commercial restrictions led to smuggling and to complaints and claims on both sides. Chronic disorder in Mexico left American citizens at the mercy of bandits, and increased the friction between American and Mexican authorities. The efforts of Mexico to use French and British aid<sup>13</sup> in opposition to the United States opposed the American Monroe Doctrine, and gave a powerful argument to those in America who were eager for expansion to the Southwest. Both Mexico and the United States exaggerated the British peril. The growing belief in America that the Pacific was the limit of our manifest destiny could be successfully fulfilled only at the expense of Mexico. The annexation of Texas and the desire of President Polk to secure California brought affairs to a crisis, and violence along the frontier enabled Polk to send to Congress his savage war message,<sup>14</sup> in which he argued that war existed by the act of Mexico. In spite of Calhoun's argument that the war power resided in Congress under the Constitution, and in spite of bitter opposition, especially in the North,<sup>15</sup> the

<sup>12</sup> W. R. Manning, *Early Diplomatic Relations between the United States and Mexico* (1916).

<sup>13</sup> E. D. Adams, *British Interests and Activities in Texas, 1838-1846* (1910).

<sup>14</sup> *Senate Journal*, 29th Congress, 1st sess.

<sup>15</sup> See J. R. Lowell's "The Present Crisis" (1844) and *The Bigelow Papers*, 1st series (1848), for scathing indictments of the annexation of Texas and the Mexican War.



President was able to bring the United States into a condition of war.

At its close many in America talked about annexing the entire country, some on highly altruistic grounds, others from motives of extreme selfishness. It was argued that Mexico was a "poor foundling" unable to care for itself, and that Providence had obviously assigned to America the destiny to take charge of her. The *National Era*, an anti-slavery organ, favored the absorption of Mexico state by state. George Bancroft, our minister to England, wrote to the Secretary of State: "People are beginning to say that it would be a blessing to the world if the United States would assume the tutelage of Mexico." Some Senators, such as Hannegan of Indiana, wanted all of Mexico. Others, like Webster of Massachusetts, wanted none of it. In the House, opposition to the war was led by Abraham Lincoln, who argued that it was unnecessary and that it was unconstitutionally begun by the President instead of by Congress. Opposition to the war and to annexation came mainly from the better educated classes of the North. They produced a flood of careful briefs, histories, and satires, and for a long time fixed the tradition in America that the Mexican War was a blot on our national good name. Whig orators in Congress hoped that the Mexicans would welcome our soldiers to "hospitable graves." Whig newspapers declared that "every heart worthy of American liberty had an impulse to join the Mexicans." The opposition to the war was partly honest abolition opposition on the part of those who believed that an effort was being made to extend slave territory, but much of it was Whig politics. Polk finally decided to compromise <sup>16</sup> between the extreme friends and enemies of annexation, and a treaty was ratified by which the United States secured Texas and the territory contained in the present states of Nevada, Utah, California, New Mexico, Arizona, and Colorado. By the later Gadsden Purchase an additional area to the south was secured, by which boundary disputes were settled and a southern route for a Pacific railway was secured.

The war between the United States and Mexico marked the parting of the ways between the United States and the Spanish-American nations. From that time the southern countries began to fear their powerful neighbor and to believe that it would use its strength increasingly to interfere in their affairs and to exploit

<sup>16</sup> For Polk's reasons for not annexing all of Mexico, see the *Transcript of Polk's Diary* in the New York Public Library.

their weakness. This change in attitude has been widely recognized by Spanish-American writers. Ex-President Bonillas of Honduras stated that "ever since the Mexican War, the Monroe Doctrine, instead of being considered as a guarantee of American independence by the Latin American countries, has been regarded as a menace to their existence." The Venezuelan historian, Blanco Fombona, says: "The United States was, until her war with Mexico, a people without militaristic or imperialistic ambitions, the model and home of civil liberty. All South America admired her with the same ardor with which to-day it hates her." Manuel Ugarte, in a lecture at Columbia University, said: "The annexation of Mexican territory in 1845-48 was the revelation of a policy which was afterward to extend itself in a lamentable manner. A specter of domination and despoilment appeared to float over our undefended countries."

The boastful use of the term *manifest destiny* by American statesmen and editors naturally frightened the weaker states in the western hemisphere. Senator Douglas, in 1857, stated in Congress that "whatever the interests of the United States dictate should be considered the law of the land, and other nations must accept it, for the conditions, limitations, and restrictions of former days cannot prevail in view of the manifest destiny of our nation." President Pierce stated: "The policy of my administration will not be controlled by any timid forebodings of evil from expansion. Indeed, it is not doubted that our attitude as a nation and our position on the globe render the acquisition of certain territory, not within our jurisdiction, eminently important for our protection." Such statements could not but be construed as threats against our neighbors. The Monroe Doctrine was increasingly used to justify American intervention rather than to prevent foreign interference in Latin American affairs. In the early days, the Americans, North and South, were interested in each other and had a common desire for friendship and helpful relations, but the Mexican War started a suspicion and fear of the United States among the southern countries, which grew to such great proportions that it became the outstanding phenomenon in American international relations.

The United States has naturally had more contact with England than with any other European nation. England was the mother country, and after independence was accomplished a large part of our trade continued to be with the British Isles. Our northern boundary touches British territory for nearly 4,000 miles, and has

given rise to serious boundary disputes. The British navy and merchant marine dominated the Atlantic Ocean, which has been our main highway of international intercourse. Both nations use the same language, so that each can read what the other says about her, and until recent years, the result was by no means flattering to either. In view of the attitude of both nations between 1820 and 1850 the wonder is that war was avoided. The Americans took keen delight in "twisting the lion's tail." English books and papers made malicious attacks on Americans and American institutions. The *Quarterly Review* informed its readers that "the supreme felicity of a true-born American is inaction of body and inanity of mind." Ignorance, provincialism, and crudeness on the part of democratic America were irritating to the British, and arrogance and contempt characterized aristocratic England's attitude toward the ex-colonials. The American Revolution left a strong prejudice in the United States against England and this was increased by the offenses of British sea power during the Napoleonic period.

The close of the War of 1812 left many disputes unsettled, but in spite of heated controversies and threatening demonstrations on both sides these controversies were gradually adjusted without resort to arms. Shortly after the close of the war an agreement was reached which allowed the Americans to sell their surplus food in the British West Indies in return for sugar products. Thus the old mercantilist system of restricting the trade of colonies to the mother country alone was abandoned. In 1817, when feverish competition to build naval armaments on the Great Lakes threatened to impoverish both nations and to lead to war, the Rush-Bagot agreement<sup>17</sup> was reached, by which both nations promised to maintain on the Lakes vessels for police duty only. Disarmament as a means of preventing war was thus inaugurated. In 1818 American fishermen were given certain rights to use the Canadian shore, and a "joint occupation" of the Oregon country for ten years was agreed upon.

After 1820 the growth of national spirit in the United States and the coming into power of a new generation of statesmen who had been trained in the legends of the Revolution and who were averse to all things English, created a psychological atmosphere that made mutual adjustment more difficult. Besides, the influx of Irish immigrants into America and their activity in politics introduced a strong element bitterly hostile to England. On the

<sup>17</sup> *American State Papers, Foreign Relations*, IV, 202.

other hand, the growing importance of the industrial class in England, dependent upon American food and cotton, and the passing of the old landed aristocracy, with its dislike of democratic ideals, made the British more willing to make concessions and to avoid war. After the Reform Act of 1832 there was an added bond of sympathy between Great Britain and the United States. The radicals in England systematically adduced American examples in support of their demands for reforms, and the Americans were interested in their efforts. The democratic spirit of Cobden and Bright became influential in British politics and won the approval of Americans. Numerous diplomatic difficulties arose between the two nations, but all were smoothed out when sober thought made it clear that the two nations could not afford to go to war. The friendship of the two nations was especially stimulated after 1840 by the fact that both were taking the first steps in the new policy of free trade, which promised to cement their destinies by a steadily increasing bond of commerce. The Webster-Ashburton treaty (1842) settled the controversy over the Maine boundary; the Oregon question was adjusted by a compromise (1846);<sup>18</sup> and England finally gave up her claim to the right of searching American vessels engaged in the slave trade.

Finally, in the Clayton-Bulwer treaty of 1850,<sup>19</sup> the two nations agreed that neither should exercise exclusive control over any canal that should be constructed to join the Atlantic and Pacific oceans, that no fortifications should be built to command it, and that neither country should colonize or assume dominion over any part of Central America. The prospective canal was to be neutral even in case of war between the two countries. The Clayton-Bulwer treaty was attacked as a violation of the Monroe Doctrine, Buchanan said that it applied the doctrine against ourselves rather than against European nations; and the Democratic platform in 1856 stated that "we can, under no circumstances, surrender our preponderance in the adjustment of all questions arising out of" interoceanic communication. At the time, however, Great Britain had certain special interests in the region and the United States was in no position to build a canal without British capital; hence the joint agreement seemed to most Americans to be a compliment to our growing national position.

After 1850 the increasing importance of the Pacific opened a

<sup>18</sup> *Senate Doc. 489*, 29th Congress, 1st sess.

<sup>19</sup> W. MacDonald, *Select Documents of United States History*, No. 77.

new field for diplomatic effort. The whale-fishing was at its height, and numerous American clippers were engaged in the traffic between New York and Canton. The discovery of gold in California increased the trade around the Horn and across the Isthmus of Panama. A treaty in 1844 opened the trade of China, which was much extended by the treaty of 1858, which also opened China to missionary activities. In 1849 a treaty of friendship and commerce was made with Hawaii, which treaty brought those islands within the American sphere of influence. In 1851 the native rulers desired annexation, which the United States refused, while promising protection. In 1854 a treaty with Japan, previously closed to the outside world, marked the beginnings of a new life for that nation.

As early as 1780 Thomas Pownall said: "Whether the West Indies are naturally parts of the North American continent is a question of curious speculation. The whole must in the course of events become parts of the great North American domain." From the moment we acquired Louisiana and the Floridas, Cuba became the logical step in our expansion to the south. Many statesmen agreed that the "Pearl of the Antilles" was destined to be a part of the American Union. Jefferson said that Cuba was the most interesting addition that could be made to our system of states.<sup>20</sup> After 1848 American interest in Cuba was intense. The position of the island strategically controlled much of our commerce, and the existence of slavery induced annexation sentiment in the South. The fear of emancipation under English influence affected many as earlier in the case of Texas. Southern slave-owners were always fearful of a servile insurrection in Cuba which might communicate itself to the mainland. Although New Englanders viewed the whole movement of expansion to the south as a slave-owners' conspiracy to extend slave territory, it seemed to many that the time had arrived of which Adams spoke in 1823, when he said that the annexation of Cuba had become "indispensable to the continuance and integrity of the Union itself." The press was filled with articles on Cuba,<sup>21</sup> and suggestions were made for the purchase of the island, for annexation by conquest, and for annexation after a revolution. Filibustering became the fashion of the day and expeditions were openly fitted out in New York and New Orleans. In reply to efforts of France and England to prevent this practice, Edward Everett sent a dispatch in which he asserted the primacy

<sup>20</sup> *Works* (Ford ed.), X, 278.

<sup>21</sup> J. M. Callahan, *Cuba and International Relations* (1899).

of our interests, our determination that no other foreign power should replace Spain in the island, and our intention to act toward it as we thought necessary. In 1848 Buchanan offered to buy it from Spain, and in 1852 the Democrats proposed to join its annexation with that of Canada as a campaign issue.

In 1854, when Spain refused to make reparations for alleged injuries to American commerce with Cuba, the United States ministers to England, France, and Spain were directed by President Pierce to "compare opinions and to adopt measures for perfect concert of action in aid of the negotiations at Madrid." The result was the "Ostend Manifesto" of 1854,<sup>22</sup> which stated that the position of Cuba made its acquisition necessary to the United States, and that if Spain refused to sell, "it will then be time to consider the question, does Cuba in the possession of Spain seriously endanger our internal peace and the existence of our cherished union." "Then, by every law, human and divine," it concluded, "we shall be justified in wresting it from Spain if we possess the power." The development of the slavery controversy in the United States prevented the following out of this policy, and it was soon forced out of campaign discussions by other issues. The belief that we were destined to secure the island at some time survived, and a corollary was added to the Monroe Doctrine to the effect that it was our duty to occupy territory if necessary to prevent international nuisances at our doors or to "assume the white man's burden" by aiding inferior peoples.

Throughout the period, politicians frequently tried to distract public attention from the approaching internal conflict by arousing national sentiment against foreign nations and by pointing the way to national glory through expansion. Webster wrote that his purpose was to "touch the national pride and make a man feel sheepish and look silly who should speak of disunion." The habit of making florid political speeches in diplomatic documents was common.<sup>23</sup> Diplomatic policies in general were secondary to domestic politics. The United States took much interest in the European revolutions of 1848. The Democratic convention of that year resolved "that, with the recent development of this grand political truth of the sovereignty of the people and their capacity and power for self-government" which was "prostrating thrones and

<sup>22</sup> *House Exec. Doc. No. 93*, 33rd Congress, 2nd sess.

<sup>23</sup> See that of Everett in his declaration against European interference in Cuba, and that of Marcy in the case of Martin Koszta.



erecting republics on the ruins of despotism in the Old World," it felt a renewed zeal in defending liberty at home. The United States promptly recognized the new government in France, and gave much unofficial sympathy to Kossuth when he came to America in 1851 to secure aid for Hungary's effort to establish republicanism and independence.

Because of the desire of the United States to remain neutral in European wars, we were much interested in the development of international law, especially that dealing with the rights of commerce. At the close of the Crimean War, the principal nations of the world, in the Declaration of Paris (1856), agreed to the long-maintained American doctrine that free ships make free goods, that neutral goods in enemies' ships are free, and that blockades to be legal must be effective. The United States refused to join in this declaration, Secretary of State Marcy giving as his reason that the United States wished to exempt all private property from capture at sea except when violating a blockade or when contraband. The United States also objected to the abolition of privateering, since with our large merchant marine and our small navy, we should be at a disadvantage if the right of commissioning private vessels were given up. Nevertheless, the Declaration of Paris marked an important step toward the view of neutral rights that the United States had generally supported.

The position of our naturalized citizens was also an issue during the period, as it had been earlier in the War of 1812. The increasing number of immigrants coming to America raised difficult questions of citizenship with almost all countries in Europe.<sup>24</sup> They asserted the principle of indefeasible allegiance; the United States asserted the right of individual choice of nationality. Since the naturalized immigrants in America had votes, the question had a political influence in America. All party platforms began to contain assertions that it is the "duty of the United States to afford ample and complete protection to all its citizens, whether at home or abroad, and whether native or foreign."

In 1848 Polk wanted to annex Yucatan, and he found his authority in an expansion of the Monroe Doctrine. He stated that annexation to the United States would prevent the country from becoming a colony of some European power, thus introducing the "political system" of Europe into the American continent. The

<sup>24</sup> See the case of Martin Koszta. J. B. Moore, *American Diplomacy* (1905), pp. 194-199.

American people had expanded, and diplomacy was expected to justify and confirm this expansion. Our commerce and shipping were extensive and our efforts to secure equal rights on the highways of world trade and to negotiate favorable commercial treaties had been markedly successful. Relations between the United States and Canada, marked by bitter antipathies at the beginning of the period, were cordial at its close, through the reciprocity treaty of 1854. Our boundary disputes were practically all adjusted, and most of the troublesome questions of international relations had been settled. This had been accomplished without war with Europe and without conscious violation of our policy of isolation. When Lincoln became President, America was almost free of foreign complications. From the beginnings of the Republic to the enunciation of the Monroe Doctrine the United States was intensely interested in world politics, because Europe, resentful of our experiment in democracy, threatened our existence. From the time of the Monroe Doctrine to the Civil War, we proclaimed the doctrine of isolation and turned our back on Europe, but remained interested in foreign questions through the activity of our diplomacy in carrying out the policy of manifestly destined expansion. By the middle of the century, however, the danger from Europe was completely ended and our "natural boundaries" had been filled out. The United States possessed a territory so consolidated and self-dependent that there was no danger of having any neighbor strong enough to cause anxiety. We had outlets to both oceans, and were rapidly extending our interests in the Pacific and the Caribbean areas. Until the outbreak of the war with Spain in 1898, the United States took little interest in international questions. After the settlement of the great domestic problems of the Civil War, attention was directed to the great process of internal growth that prepared the nation to take its place among the powers of the earth, and that made the policy of isolation no longer possible.

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## CHAPTER XI

### POLITICAL THOUGHT OF THE CIVIL WAR PERIOD

#### 1. FINAL PERIOD OF THE SLAVERY CONTROVERSY

The Compromise of 1850 had apparently settled the extent of slavery for all the territories, and except among the extremists there was a general determination to avoid disturbing agitation. The elder statesmen, both North and South, were loyal to the Union, and seeing it threatened by the slavery controversy, urged "finality" and sought to quiet further discussion. By 1854, however, a new spirit prevailed. Clay, Webster, and Calhoun were dead; a group of militant younger men were in control on both sides. Seward,<sup>1</sup> Chase,<sup>2</sup> and Sumner,<sup>3</sup> bitter opponents of slavery, were the most conspicuous Northern leaders. Jefferson Davis and Toombs of Georgia led the more conservative element of the south. They did not advocate secession, but were willing to accept it if necessary to save the South from an anti-slavery majority in the North. Another group of Southerners, led by Yancey<sup>4</sup> of Alabama and Rhett of South Carolina, were open secessionists. Among Northern Democrats the leaders were Douglas and Buchanan, who still hoped to avoid an open break.

The slavery controversy had been kept alive by the hostility of the North to the fugitive slave law; it was brought to a crisis by the necessity of organizing the Nebraska country, after the Oregon question had come up and the migration to California and the plans for a railway to the Pacific made that region important. Earlier attempts to make it a territory were defeated by the slavery men, because under the Missouri Compromise it would come in free. Senator Atchison of Missouri said in 1853 that he would never

<sup>1</sup> William H. Seward, *Works*, ed. G. E. Baker (5 vols., 1853-1884).

<sup>2</sup> A. B. Hart, *Salmon Portland Chase* (1899).

<sup>3</sup> Charles Sumner, *Works*, ed. E. L. Pierce (15 vols., 1870-1883).

<sup>4</sup> J. W. Du Bose, *Life and Times of Yancey* (1892).

see Nebraska free soil, but that he would vote to make it a territory on condition that the people who settled there could decide for themselves the question of slavery or freedom. Discussion of the question was warm in the Western country and was taken up by Democratic papers in the East. It was rumored that a bill to create Nebraska territory under this plan would be introduced in Congress, but anti-slavery men did not take the prediction seriously, since such a step would repeal the Missouri Compromise and overthrow the agreement reached in 1850. In December, 1853, a bill to create Nebraska territory was introduced in the Senate, and was reported by Douglas, chairman of the Committee on Territories, with Atchison's slavery propositions attached as amendments. These provided that "all questions pertaining to slavery in the territories, and the new states to be formed therefrom, are to be left to the decision of the people residing therein, through their appropriate representatives." Shortly after a bill was passed which specifically repealed the Missouri Compromise. Douglas maintained that his bill was in strict accord with the Democratic platform.

Douglas called his doctrine "popular sovereignty," since it announced the principle that the people of the territory should settle their own problems. His enemies called it "squatter sovereignty." The principle had been discussed as early as 1845 in connection with the admission of Florida to statehood. It was elaborated in 1847 by Lewis Cass,<sup>5</sup> and was frequently put forward in the Missouri legislature.<sup>6</sup> It was a characteristic doctrine of the Western democracy, firm in its belief in popular sovereignty and local self-government. Cass had argued that the people of the territories were not represented in the national government, therefore, in accordance with the principles of democracy, they should not be governed by it. He based his theory of popular sovereignty on justice or natural right, rather than on the Constitution. The popularization of the doctrine on a more legalistic basis was the work of Douglas. In 1849 Douglas had upheld the Missouri Compromise and said that "it was canonized in the hearts of the American people." He was, however, much interested in westward expansion and he was willing to make concessions to the South to get the territory organized. He was also a radical Western Democrat, believing in the importance of local autonomy, and resenting the idea that the sturdy

<sup>5</sup>In his letter to Nicholson.

<sup>6</sup>Memorial of the Missouri legislature in 1845, printed in *Congressional Globe*, XIV, 154-155.

Western settlers were not fully competent to settle their own affairs. It was his proud boast that American citizens were capable of self-government in states or in territories. Like many other politicians who feared that the slavery issue would disintegrate the parties, he wished to remove the troublesome question from politics, and believed that his popular sovereignty theory would accomplish that purpose. He argued that the North had refused to extend the line of 36° 30' to the new territory acquired by the Mexican War, and had thereby abandoned the pernicious sectional principle of the old compromise. His proposal, he said, was a national measure, knowing no boundaries, instead of the old line that divided the country into two hostile sections. Douglas argued that Clay and Webster, in securing the Compromise of 1850, had virtually consented to repeal the old line in the Louisiana territory. The fallacy of this argument was exposed, especially by Edward Everett,<sup>7</sup> who argued that Congress could not divest itself of its constitutional duty to legislate for the territories.<sup>8</sup>

Opposition to the proposal was immediate and bitter.<sup>9</sup> The bill was denounced as "a gross violation of a sacred pledge" and "an atrocious plot to exclude from a vast and unoccupied region immigrants from the Old World and free laborers from our own states, and to convert it into a dreary region of despotism inhabited by masters and slaves."<sup>10</sup> Northern newspapers condemned the bill, and stirring resolutions of protest came from mass meetings and from state legislatures. The clergy generally condemned it as immoral, inhuman, and irreligious. With the passage of the act all possibility of compromise between the sections was ended. Emerson wrote: "The fugitive slave law did much to unglue the eyes of man, and now the Kansas-Nebraska bill leaves us staring." Greeley, in the *New York Tribune*, wrote that "Pierce and Douglas have made more abolitionists in three months than Garrison and Phillips could have made in half a century." The outcry of the North was not merely an expression of anti-slavery feeling. National patriotism was also irritated at the breaking of a solemn agreement. Anti-slavery leaders believed that the country had been betrayed, and a cry went up from the North for emigration of free labor to "save

<sup>7</sup> *Orations and Speeches* (4 vols., 1853-1868).

<sup>8</sup> For the record of proceedings, see *House and Senate Journals*, 33rd Congress, 1st sess. For debates, see *Congressional Globe*, and appendix.

<sup>9</sup> A. Johnston, *American Orations* (1927), II, Pt. I, 3-121.

<sup>10</sup> From the address signed by Chase, Sumner, Wade, Smith, and Dewitt, in the *National Era*, the Abolition journal in Washington.



Kansas." The Emigrant Aid Society<sup>11</sup> was organized in New England, and a conflict of force, not of argument, was begun on the soil of the new territories. Pro-slavery men crossed the border and formed societies of "Sons of the South," announcing in their paper, *The Squatter Sovereign*, that they would "lynch and hang, tar and feather and drown every white-livered abolitionist who dared to pollute the soil of Kansas." Seward replied: "Come on, then, gentlemen of the Slave States. Since there is no escaping your challenge, I accept it in behalf of freedom. We will engage in a competition for the virgin soil of Kansas, and God give the victory to the side that is stronger in numbers as it is in the right." Each group organized its own government. In President Pierce's message to Congress in December, 1855, he tried to dodge responsibility by declaring that nothing had happened to justify federal interference; but in a special message a month later he stood by the pro-slavery party, and recognized its government as "the legitimate legislative assembly of the territory."

The indignation in the North created by the Kansas-Nebraska Act was further aroused by the Dred Scott decision<sup>12</sup> of the Supreme Court in 1857. The Southern majority of the court took the opportunity in that case to give an elaborate *obiter dictum* disquisition on the historical status of the negro, the question of his citizenship, and the power of Congress over slavery in the territories. They hoped to put an end to the controversy by means of a decision of the highest judicial tribunal of the land. In a long argument, Taney gave the majority opinion of the court that the negro was not a citizen in the view of the framers of the Constitution, that Congress had no power to confer citizenship upon him, and that since slaves were property, the Constitution protected their owners in all the territories of the Union. Taney asserted that federal citizenship depended upon state citizenship, that the citizenship of each person must be determined by the law of his state, and that if such law did not recognize him as a citizen he could not be

<sup>11</sup> To the vigorous fighters that left for Kansas, Whittier addressed the poem:

We cross the prairie as of old  
The pilgrims crossed the sea,  
To make the West, as they the East,  
The homestead of the free!

<sup>12</sup> *Scott v. Sanford*, 19 *Howard*, 393. For contemporary discussions, see Benton, *Historical and Legal Examination of the Dred Scott Case*; Gray and Lowell, *Legal Review of the Case of Dred Scott*; Foot, *Examination of the Case of Dred Scott*. For conservative Northern opinion, see E. Choate, *Works*, II, 387-414.

considered as a citizen by the United States. He held that the right of Congress to legislate for the territories was limited to the territories held in 1787, and did not extend to those acquired later. The regulation of slavery was beyond the power of the national government; only when a territory became a state could it decide the question for itself. The Missouri Compromise was thereby declared unconstitutional, and the dogma of "popular sovereignty" in the territories was swept away. The nation must neither prohibit, nor allow the territories to prohibit slavery within the territories. The Constitution recognized property in slaves, and no part of the government had the right to destroy such property. After this decision, all three departments of the national government stood committed to the support of slavery. In the last annual message of Pierce he accused the North of "revolutionary assaults on the South's domestic institution." Congress had opened the Western territories to slavery, and the Supreme Court had nationalized slavery, making it legal in all parts of the country except where it was excluded by the laws of the free states. The earlier attempts to limit the area of slavery had broken down; henceforth slavery was to be national, and freedom, sectional. The status of slavery in the territories was, in fact, no longer a judicial or constitutional matter. It had become a political issue, and no decision of the court could settle it. The opponents of slavery denounced the majority of the court as subservient to the slave power, and accepted the dissenting opinion of the court as stated by Justice Curtis.

The attempt to admit Kansas as a state under the Lecompton constitution (1857),<sup>13</sup> which was not to be submitted to the vote of the people except for the clause in reference to slavery, added to the excitement of the period.<sup>14</sup> The panic of 1857 occasioned great distress in the business world, and lessened the respect of the powerful business interests for the government and for the party in power. While the Northern industries were paralyzed, the South was prosperous with large exports of cotton at high prices. The experience of this period confirmed the belief of many in the South that slavery was an economic blessing to be retained and extended

<sup>13</sup> Poore, *Federal and State Constitutions*, I, 598-613. For the struggle in Congress over the admission of Kansas, see *House and Senate Journals*, 34th, 35th, 36th Congress, and the *Congressional Globe*.

<sup>14</sup> See the "Howard Report," 34th Congress, 1st sess., Rept. No. 200; and the "Covode Report," *House Executive Docs.*, 36th Congress, 1st sess., No. 648.

at all costs. They believed that "the wealth of the South is permanent and real; that of the North is fugitive and fictitious."<sup>15</sup>

Chief attention in 1858 centered in the debates between Douglas and Lincoln,<sup>16</sup> rival candidates for the Senate. No other public discussion has been more important in our history. It educated the North to the true nature of the problem before it, and convinced the South that secession was the only way to avoid the ultimate destruction of slavery. Lincoln believed that the time had come to begin an uncompromising attack on slavery. He asserted: "'A house divided against itself cannot stand.' I believe this government cannot endure permanently half slave and half free. I do not expect the Union to be dissolved—I do not expect the house to fall—but I do expect it will cease to be divided." He believed that either slavery must be gradually extinguished in all parts of the Union, or it must become legal in all parts of the Union. This advanced position Douglas called the froth of abolition ravings. He argued that Lincoln's position would demand uniformity of law and custom in all respects in the commonwealths in order to secure the permanence of the Union, and that this would lead to the establishment of a centralized empire in place of a federal republic. When Douglas accused Lincoln of stating that the Union could not exist half slave and half free, as the fathers made it, Lincoln quietly pointed out that the fathers did not make the Union half slave and half free, but found it so, and that by their actions in prohibiting slavery in the Northwest Territory and by the provision for the abolition of the slave trade they showed their belief that slavery should ultimately be extinguished. He pointed out that the doctrine of "popular sovereignty" was the new doctrine, while his doctrine of the prevention of slavery extension by congressional enactment was the method of the fathers.

Lincoln held that, since the Dred Scott decision<sup>17</sup> had declared that Congress had no control over slavery in the territories, neither the people nor the legislatures of the territories could possess such power, since they were the creatures of Congress and had only such powers as Congress conferred upon them. Congress could not confer upon a territory powers which Congress did not possess. If

<sup>15</sup> See DeBow's *Review*.

<sup>16</sup> G. H. Putnam, ed., *Political Debates Between Abraham Lincoln and Stephen A. Douglas*; Nicolay and Hay, eds., *Complete Works of Lincoln* (2 vols., 1904); Moore, ed., *Works of James Buchanan* (12 vols., 1908-1911).

<sup>17</sup> For Lincoln's discussion of the Dred Scot decision, see A. Johnston, *American Orations* (1927), II, 154-167.

this were admitted, the "popular sovereignty" theory of Douglas was untenable. Lincoln summed up the sophistry in the popular sovereignty doctrine as teaching "that a thing may be lawfully driven away from where it has a lawful right to be." Lincoln framed his famous question to Douglas as follows: "Can the people of a United States territory, under the Dred Scott decision, in any legal way, against the wish of any citizen of the United States, exclude slavery from its limits, prior to the formation of a state constitution?" The answer of Douglas, which became known as his "Freeport Doctrine,"<sup>18</sup> was that the people of a territory might exclude slavery from that territory, prior to its admission as a state, by failing to enact police regulations for the protection of slave property therein, and by legislation unfriendly to the institution.

This admission was read far and wide and was much discussed in the South. It cost Douglas the support of that section, which began to realize that popular sovereignty was not a safe doctrine on which to base the continued existence of slavery, and which fell back more and more on the theory of Calhoun as restated by Jefferson Davis. Southern leaders insisted that the letter of the law as interpreted by the Dred Scott decision should be observed, and that since the Constitution carried slavery into the territories, the national government must protect it there. Lincoln replied that slavery could and had existed without police regulations in its favor, and that territorial legislation unfriendly to slavery would be a violation of the Constitution, since the failure of a territorial legislature to protect slave property would violate a duty laid upon it by the Constitution. Douglas shifted his position somewhat and argued that the Constitution, as interpreted by the Dred Scott decision, "did not carry slavery into the territories beyond the power of the people of the territories to control it as other property." Lincoln showed that, since the Constitution provided that no one should be deprived of his property without due process of law, and since slave property was recognized by the Constitution, the people of the territory had no power to destroy slave property, but only a power to protect it.

When Douglas attacked Lincoln's belief in the necessity of the ultimate abolition of slavery as an attack on slavery in the states by revolutionary means, Lincoln replied that he looked forward to the gradual and peaceful accomplishment of this and by legal means.

<sup>18</sup> From the name of the place where the discussion was held.

While Douglas took a legalistic point of view, standing on the wording of the Constitution and the decisions of the Supreme Court, Lincoln took a broader historical and ethical view. He thought it quite possible that constitutional provisions or court decisions might need modification from time to time. He was able to see the nation behind the Constitution, with its power to make law and justice conform to its changing ideals. In contrast to the inconsistency between the formal legalism and the popular sovereignty theory of Douglas, Lincoln founded the powers of government upon morality. He insisted that Congress was empowered by the Constitution to exclude slavery from the territories, and that the ethics of the nineteenth century demanded that Congress should use its power for that purpose. In his political philosophy Lincoln combined the humanitarian motives of the free-soil arguments with the ideal of national union. The Union must be preserved at any cost; and slavery destroyed, if possible.

The debates between Lincoln and Douglas clarified the issues in the minds of the people and hastened the clear-cut sectionalization of public opinion. In the North the belief grew that slavery must ultimately be abolished; in the South the institution was defended as necessary and desirable. There was, nevertheless, a considerable anti-slavery sentiment in the South almost to the actual outbreak of the Civil War. In contrast to the earlier plantation life, there were arising prosperous towns whose population had little property interest in slavery. Their merchants indeed suffered from the policy of the plantation owners in buying their supplies wholesale from the Northern cities. There was also social rivalry between the professional and merchant classes of the towns and the country squires, and this feeling led to political differences. The point of view of this new bourgeoisie of the South was expressed by H. R. Helper.<sup>19</sup> He stated that the purpose of his book was "to do something to elevate the South to an honorable and powerful position among the enlightened quarters of the globe." He proved the vast superiority of the wealth, resources, and civilization of the North, and denounced the oligarchy of slave-holders as fatal to the progress of the middle and lower classes of the South. He insisted that slavery must disappear in order to give the millions of whites their rightful place in the economic and social life of the section, to introduce varied industry and commerce, to foster cities and schools. He argued that the slave-holders had departed from the principles

<sup>19</sup> *The Impending Crisis* (1859).



of the founders of the Republic, and he proposed a political organization of non-slave-holders and liberal slave-holders for the purpose of securing control of the governments of the Southern states. The governments should then levy taxes upon slave property so heavy as to make it worthless. Helper's book represented the class hostility between the large planters on one side and the town dwellers and poor whites on the other. It was widely used as a campaign document in the North, and its indorsement by prominent Northern politicians was viewed by the South as an insult. Its author was branded with the odious term of *poor white*.

Even earlier, Mrs. Stowe's *Uncle Tom's Cabin* (1852), first published in an obscure anti-slavery newspaper, had attacked slavery on behalf of the abused negro, had received wide circulation, and had made an imperative moral issue of what had long been considered a political and economic question. The South knew that her picture of slave life was sensational and misleading, but many persons in the North were convinced that the book was an accurate account of actual conditions. There were many philanthropic slave-holders who were interested in improving the conditions of their slaves and who were willing to consider ultimate emancipation. All classes in the South, however, had a common fear of slave insurrection, and this fear was played upon by the supporters of slavery, especially in magnifying the danger and in accusing the abolitionists of inciting "negro risings." This fear was given a great impetus by John Brown's raid on Harper's Ferry in 1859. It created a solidarity of interest among all classes in the South, quieted the opposition of the non-slave-holders and of the liberal masters, and united the section in intense support of its institution. The South was convinced of secret insurrectionary movements prepared in the North. Southern women in particular were united and resolute. "Men of the South, defend the honor of your mothers, your wives, your sisters, and your daughters. It is your highest and most sacred duty." To the chivalrous spirit of the South such an appeal was irresistible. The conviction grew among all classes that the white men of the South must stand together in the presence of a mortal peril. Hatred born of fear was added to differences of political and economic doctrine. In his farewell speech to the Senate in 1861, Jefferson Davis defended the secession of his state by asserting that she acted under one of the grievances that had caused the American Revolution, and cited the accusation against George III that he was "endeavoring of late to stir insurrection



among our slaves." The very boldness of his error in this citation<sup>20</sup> shows the intensity of Southern conviction.

In 1860 Jefferson Davis presented to the Senate the ultimatum of the radical leaders of the South on the question of slavery. They affirmed Calhoun's theory of state sovereignty, demanded that Congress protect slavery in the territories, insisted upon the enforcement of the Fugitive Slave Act, and repudiated the Freeport Doctrine of Douglas by asserting that "neither Congress nor a territorial legislature, by direct or indirect legislation, has the power to annul or impair the constitutional right of any citizen to take his slave property into the common territories and there hold and enjoy the same while the territorial condition remains." About the same time, Lincoln, speaking in New York City,<sup>21</sup> was accusing the South, with its demand for "rule or ruin," of bringing the question of slavery into dangerous prominence because of its growing demands and its threats to destroy the Union unless it were allowed to construe the Constitution as it pleased. He concluded with: "Let us have faith that right makes might; and in that faith let us to the end dare to do our duty as we understand it." Shortly after, the platform upon which he stood as a candidate for the Presidency denied "the authority of Congress, of a territorial legislature, or of an individual to give legal existence to slavery in any territory of the United States." This was a repudiation of the Dred Scott decision, and a departure, equally radical but in the opposite direction from that of the South, from the Compromises of 1820 and 1850. The issue was at last clearly stated: Is slavery right and to be extended, or is it wrong and to be checked? Such was the hopelessly diverse attitude of the two sections on the slavery question just before the issue was referred to the arbitrament of arms.<sup>22</sup>

## 2. FORMATION OF NEW PARTIES

By 1850, when the question of slavery was again forced upon Congress and upon the country, public opinion had become clearly

<sup>20</sup> The Declaration of Independence reads, "He has excited domestic insurrections amongst us"; and in the original draft it read, "He has incited treasonable insurrections of our fellow citizens." Clearly there was no reference there to slaves.

<sup>21</sup> In his speech at Cooper Union.

<sup>22</sup> For discussion of secession from various points of view in the Senate in 1860 and 1861, see A. Johnston, *American Orations* (1927), II, 230-332.

divided along sectional lines, but the division was not recognized in the existing political parties. Within the ranks of both Whigs and Democrats were men of all sections, holding all sorts of views on the great sectional issue. For twenty years both parties had been reluctant to take any aggressive stand on the slavery question, fearing to alienate powerful elements in their membership. In spite of the growing interest of an ever increasing number of citizens, both party organizations had been for the most part non-committal on the questions of the abolition of slavery and the extension of the slave system. The two political organizations had become accepted institutions, within which political life flourished. They were the great weapons of power, and the mass of voters were possessed of a strong sense of party regularity. Agitation was kept alive by individual insurgents, and some of the greatest statesmen in Washington kept aloof from party; but in general, decisive political action was controlled by the leaders of the two great regimented armies of voters. Both parties were devoid of any significant platform; both were chiefly interested in the control of the government. Their leaders took refuge in compromises and in evasive party platforms.

Diverse interests within each party, however, had reached the point where continued cohesion was a mockery. Discontent with the temporizing policy of both parties toward slavery was increasing among those who believed that slavery was a moral wrong. This discontent had first found expression in the non-political abolition movement. By 1840 a number of practical men believed that agitation in press, pulpit, and platform should be supplemented by organized political activity, and under their leadership the Liberty party was formed. The members of this group wished to keep clear of other issues and form a national party for the overthrow of slavery and the vindication of human equality. They asserted that slavery was the creature of state law, that the Constitution was an instrument of liberty, and that the influence of the national authority should be arrayed on the side of free labor. They held that "all slavery within the national jurisdiction should be abolished," and that the national government "has no power to establish or continue slavery anywhere." Some went even further and declared that the principles of the Declaration of Independence, by which all persons had an inalienable right to life, liberty, and the pursuit of happiness, had become constitutional law. On this basis they argued that all provisions in the Constitution recog-

nizing slavery should be abrogated. They argued the "higher law" which men were morally bound to obey.

The territorial acquisitions after the Mexican War convinced additional thousands of anti-slavery men that the old parties were incompetent to prevent the extension of slavery, and that a new party was needed. Many who felt no responsibility for the abolition of slavery in states where it was legally recognized were bitterly opposed to its further extension in the national territories, under the protection of the national power. Restriction, rather than abolition, was their aim. Anti-slavery Whigs and anti-slavery Democrats tried to commit their parties to this principle and, when they failed, they abandoned their parties and joined the Liberty party. Those who came out from the Whig party were often called "Conscience Whigs," in opposition to the "Old-Line" or "Cotton Whigs."<sup>23</sup> Charles Francis Adams, Charles Sumner, R. H. Dana, and Joshua Giddings were among the leaders of the anti-slavery Whigs. They believed that the slavery question had passed beyond the range of expediency and compromise, and were unwilling to sacrifice principle to party loyalty. "We cannot say, with detestable morality, 'Our party right or wrong.' Loyalty to principle is higher than loyalty to party."<sup>24</sup> When the Whig national convention in 1848 voted down the Wilmot Proviso, the anti-slavery Whigs revolted from the party.

There was a corresponding schism in the Democratic party, especially in New York State, between the old-line Democrats or "Hunkers"<sup>25</sup> and the "Barnburners,"<sup>26</sup> who were anti-slavery men first and party men afterwards, and who were willing to abandon their party if it continued to support slavery. Personal politics played a considerable part in the split of both parties.

In 1848, Conscience Whigs, Barnburner Democrats, and Liberty Men effected a fusion which took the name of the Free-Soil party. Their slogan was "Free Soil, Free Speech, Free Labor, and Free Men." Their cardinal principles were non-interference with slavery in the states where it was established by law, but prevention of any increase of the number of slave states, and full exercise of the power of the national government to prevent the existence of

<sup>23</sup> See Whittier's "The Pine-Tree," in *Voices of Freedom*.

<sup>24</sup> Storey, *Sumner*, p. 55.

<sup>25</sup> Accused by their opponents of *hankering* after the emoluments of office.

<sup>26</sup> This nickname came from their supposed resemblance to the Dutch farmer who burned down his barn in order to rid it of rats.

slavery in all territory under federal jurisdiction. Those who composed this party vindicated the national character of the Union, while denying none of the constitutional rights of the states. They aimed to confine slavery to the narrowest limits possible under the Constitution, while proposing no interference with it in the states where it existed. Their constitutional doctrine was that the federal government had no constitutional right to abolish slavery and no constitutional right to support it. Slavery was purely a state matter. If the "peculiar institution" of the slave states was free from federal interference, the slave states in turn had no right to ask Congress to support or to extend slavery. Accordingly, they argued that the fugitive slave law was unconstitutional, that slavery should be abolished in the District of Columbia and be barred from all national territories, that no more slave states should be admitted to the Union, that inter-state and coastwise trade in slaves should be prohibited, and that national power should not be used in diplomatic intercourse for the protection of slave property.<sup>27</sup>

The more conservative anti-slavery elements of the North were not at first willing to subscribe to these doctrines. They held that the rendition of fugitive slaves was clearly agreed to in the Constitutional Compact, and that if a union with slave states was to be maintained, this property was property under the Constitution which the federal government must protect, by law and by diplomacy. The Compromise of 1850, which was generally accepted by the public sentiment of the country, considerably reduced the strength of the Free-Soil party. There was a widespread determination that slavery should be banished from public discussion. Douglas declared that he never expected to make another speech on the subject of slavery. "This determination was echoed and reëchoed, affirmed and reaffirmed by the recognized organs of the public voice, from the village newspaper to the presidential message, from the country debating school to the measured utterances of Senatorial discussion."<sup>28</sup> The Free-Soilers, however, felt that a question was never settled until it was settled right, and determined to continue the agitation. Sumner protested against the suppression of discussion,<sup>29</sup> and against the efforts of the "Finality Men," as those who tried to quiet the slavery agitation were called. Opposition was centered chiefly on the fugitive slave law.

<sup>27</sup> Free-Soil platform, 1848.

<sup>28</sup> Hay and Nicolay, *Life of Lincoln*.

<sup>29</sup> Johnston and Woodburn, *American Political Orations*, II, 279.

The final struggle was brought on when the Missouri Compromise was repealed in 1854 by the Kansas-Nebraska Bill. This convinced large numbers of Whigs and Democrats, who had remained loyal to their parties, that the day of compromises on the question of slavery had passed, and that the aggressions of the "slave power" could be ended only by placing the national government in the hands of men pledged to the principles of the Free-Soil party. The rise of the Know-Nothing party at this time, a movement of native Americanism in opposition to foreigners and to the Roman Catholic Church, which held that "Americans should rule America," served to detach men from old party loyalties and traditions. The anti-slavery men of the Democratic party, the anti-Nebraska Democrats, like the former "Barnburners," were unwilling to follow the new policy of their party. Many of the conservative anti-slavery Whigs were now ready to take a more decided stand. The situation was ripe for the fusion of all these anti-slavery elements—Liberty party, Free-Soilers, anti-slavery Know Nothings, anti-Nebraska Democrats, and anti-slavery Whigs—into a new organization under a new name. Party organization was almost the last institution to yield to the forces of disunion, and when it did yield, disunion was a fact.

Of these groups the Whigs were probably the most numerous; but the name "Whig" was distasteful to many of the groups. It suggested the protective tariff and internal improvements which they had bitterly opposed. Accordingly the new party adopted the old name *Republican*,<sup>30</sup> approved by Jefferson, and called upon the nation to return to the policy of the Republican Fathers who had so persistently and successfully tried to prevent the extension of slavery to the Western territories in the Ordinance of 1787. By its opponents in the South, who also revered the name of Jefferson and resented the use of his party name, the new party was called the "Black Republican" party. They attempted to associate it with the hated policy of abolitionism. The Republican party, led by Lincoln, proposed to observe all the constitutional guarantees and had no intention to interfere with slavery where it existed in the states. It admitted that slavery was legal, but that it existed only by state law. It asserted that, under the Constitution, Congress had sovereign power in the territories, and that "in the exercise of this power it is both the right and duty of Congress to pro-

<sup>30</sup> The name was popularized especially by Greeley in the *New York Tribune*.

hibit in the territories those twin relics of barbarism, polygamy and slavery.''<sup>31</sup> Congress could establish slavery nowhere, but was bound to exclude it from all federal territory.

The Democratic party was not able to hold its members together. The Southern Democrats, led by Breckinridge, demanded that the national power should protect slavery in the national territory. They argued that a citizen of any state had the right to migrate to a territory, taking with him anything that was property under the law of his state; and that Congress was bound to protect such property, whether or not the territorial legislature was willing to coöperate. They stood on the Dred Scott decision that Congress had no power to exclude slavery from the territories. This, however, was inconsistent with the "popular sovereignty" theory of Douglas, which insisted upon the right of the people of a territory to exclude slavery if they chose. The Northern Democrats, led by Douglas, asserted the doctrine of non-interference. They held that the existence of slavery in a territory should be determined by the white voters of that territory. They might permit it or prohibit it. Neither Congress nor the people of the Union had the right to interfere. The Southern Democrats represented a sectional interest; the Northern Democrats were more national in character. These three policies were submitted to the people in 1860, and the triumph of the Republicans plunged the country into the issues of secession and war.

The Republicans in general supported the war. They stood for the Union and, as the party in power, for all necessary extension of federal power. They adopted the policy of emancipation and favored the extension of civil and political rights to the negroes. Some conservative Republicans opposed an "abolition war." They wished to conciliate the South, restore peace, and save the Union as it was. A wing of the Democrats in the North, the "War Democrats," supported the war for the Union in all legitimate ways. Another wing of the Northern Democrats, the "Traitors" or "Copperheads," denounced the war vigorously, encouraged desertion, resisted the draft, and rejoiced at Southern victories. In 1864 they secured control of the national convention of the party and demanded a cessation of hostilities "after four years of failure to restore the Union by the experiment of war." They held that a union "pinned together by bayonets" was not worth having. Their attitude led many "War Democrats" to join the Republican party,

<sup>31</sup> Republican platform, 1856.



made it difficult for the Democrats to gain support in the North on the issues of reconstruction, and helped to maintain Republican control of the national government for a long period after the war. On the other hand, the policy of the radical Republicans after the war was to divest the Southern Democrats of political power, prevent the union of the Northern and Southern wings of that party, and keep it in a hopeless minority.

### 3. POLITICAL THEORY OF SECESSION

In spite of the efforts of moderate men to bring slavery agitation to an end, and in spite of the efforts of politicians to prevent a break in party alignments, it was evident by 1858 that neither of these programs was possible. In the Freeport debate, Lincoln had asked: "Is it not a false statesmanship that undertakes to build up a policy upon the basis of caring nothing about the very thing that everybody does care most about?" There were many indications that the South meant to endure no further restrictions on its peculiar institution.<sup>32</sup> On the contrary it encouraged efforts to secure new slave lands in Latin America under the guise of a policy of "benevolent assimilation," and even attempted to reopen the African slave trade. It viewed every public question in its relation to the sectional issue. Secession was frequently referred to as inevitable. A transcontinental railroad was opposed on the ground that it "would lie outside a Southern Confederacy." Northerners were referred to in the Southern press as if they were inhabitants of a hostile foreign country. The contradiction between the doctrine of "popular sovereignty" and the Dred Scott opinion had been made clear in the Lincoln-Douglas debates, and the split of the Democratic party into Northern and Southern sections on this issue destroyed the last bond of party unity between the sections.

In February, 1860, Jefferson Davis introduced in the Senate six resolutions<sup>33</sup> upon which Southern Democrats stood. They affirmed the sovereignty of the states and the subordinate character of the federal government, and denounced the meddling of any state, or of the citizen of any state, with the domestic institutions of another. They proclaimed negro slavery to be an important

<sup>32</sup> For an example of Southern journalism of the period, see the article by "Common Sense," threatening secession, in the *Charleston Mercury*, Sept. 18, 1860.

<sup>33</sup> *Congressional Globe*, 36th Congress, 1st sess.

domestic institution in fifteen states, recognized and protected by the Constitution, and declared that any attack upon it was a violation of the most sacred obligations. They asserted the constitutionality of the fugitive slave law, and denounced the attempts of state legislatures to defeat its purpose by "personal liberty bills." They insisted that "the unity of these states rests on the equality of rights and privileges among its members, and that it is especially the duty of the Senate, which represents the states in their sovereign capacity, to resist all attempts to discriminate either in relation to person or property." They asserted that "neither Congress nor a territorial legislature, whether by direct legislation or legislation of an indirect and unfriendly nature, possessed the power to annul or impair the constitutional right of any citizen of the United States to take his slave property into the common territories: but it is the duty of the federal government there to afford for that, as for other species of property, the needful protection; and if experience should at any time prove that the judiciary does not possess power to insure adequate protection, it will then become the duty of Congress to supply such deficiency." Finally, they declared that "the inhabitants of an organized territory of the United States when they rightfully form a constitution to be admitted as a state into the Union may then, for the first time, like the people of a state when forming a new constitution, decide for themselves whether slavery, as a domestic institution, shall be sustained or prohibited within their jurisdiction." These doctrines formed the creed of the Southern wing of the Democratic party. They were based upon the Dred Scott decision, in opposition to the squatter sovereignty doctrine of the Northern Democrats, and marked a decided advance upon the principles which the slave-holders had been willing to accept in 1856.

The contest for the Presidency <sup>34</sup> in 1860 was bitterly fought. The opponents of Lincoln hoped to throw the election into the House. Everywhere they declared that the election of Lincoln meant the disruption of the Union. The Republicans derided this argument. Seward, in spite of his disappointment at not being made the candidate of the party, supported Lincoln, and stated that "I do not doubt but that these Southern statesmen think they

<sup>34</sup> The candidates were Lincoln, representing the Republicans; Douglas, representing the Northern Democrats; Breckinridge, representing the Southern Democrats; and Bell, representing the remnants of the Whig and Know-Nothing parties, now calling themselves the Constitutional Union party, and appealing to those who decried sectionalism to help save the country.

are going to dissolve the Union, but I think they are going to do no such thing." Public opinion in the North generally took this view, and was not prepared for the events of the following winter. On the other hand, the legislature of South Carolina, which met in November to cast the electoral vote of the state, decided to remain in session until the result of the election was known, and to prepare the state for any emergency, "in view of the probability of the election of a sectional candidate by a party . . . hostile to our institutions and fatally bent upon our ruin."

It was natural that South Carolina, the state in which the doctrine of state sovereignty had been elaborated into a system of positive political science and had become the political creed of its citizens, should take the leadership in the secession movement. Virginia, the former leader in the South, was not a cotton state, and her tradition of leadership was little more than a name. Four days after Lincoln's election, the South Carolina legislature called a state convention, the sovereign body under the Calhoun doctrine; and on December 20, 1860, by a unanimous vote, the convention passed an Ordinance of Secession,<sup>35</sup> declaring that the act of the convention of 1788, "whereby the Constitution of the United States was ratified . . . [is] hereby repealed, and that the union now subsisting between South Carolina and other States under the name of 'United States of America,' is hereby dissolved." Believing that they were following the example of the men of 1776, they published a list of grievances with their "Declaration of Independence," in which they referred to the personal liberty Acts, the abolition societies, the encouragement of fugitive slaves, and other acts of the North as justification for their action.

Disturbed by the course of events in the South, President Buchanan asked advice from Attorney-General Black as to the President's power in case a state should attempt to secede or should resist the laws of the United States. Black replied that the President might protect the public property of the United States in such areas, or might use military power to support federal officials there, but that if there were no federal officials in such state, neither President nor Congress had the right to use military power to enforce the laws of the United States. Such action would be equivalent to declaring war upon the state and expelling it from

<sup>35</sup> *War of the Rebellion, Official Records*, 1st series, I, 110. The declaration of causes and ordinances of secession passed by the other Southern states are in *American History Leaflets*, No. 12.

the Union. Black declared that "there was undoubtedly a strong and universal conviction among the men who framed and ratified the Constitution, that military force would not only be useless, but pernicious, as a means of holding the states together." Black was a Pennsylvania Democrat of the states' rights school, and believed that the abolitionists and Republicans were the enemies of the Union.

Following the opinion of Black, President Buchanan's message to Congress showed clearly his sympathy with the South. He declared that the danger to the Union was the result of "long-continued and intemperate interference of the Northern people with the question of slavery in the Southern states." While denying that a state had the constitutional right to secede, he admitted that the people of a state have the revolutionary right to resist intolerable oppression. He admitted that union between the North and South could not continue if the people of the South felt that their security could not be preserved under it. Buchanan denied the right of the federal government to use military force to coerce the South, and made it clear that he would do nothing during the remaining months of his term to prevent the South from taking such steps as it saw fit. He announced that he would act strictly on the defensive. "Without descending to particulars," he said, "it may be safely asserted that the power to make war against a state is at variance with the whole spirit and intent of the Constitution." He hoped for compromise, but insisted that the Union rested on public opinion and could not be cemented by the blood of citizens shed in civil war.

As Seward put it, the President held that "it is the duty of the President to execute the laws—unless somebody opposes him; and that no state has a right to go out of the Union—unless it wants to." As Dunning says,<sup>36</sup> Buchanan was "unfortunate in having officially to proclaim the disagreeable consequence of a long-established theory of governmental relations. The fixed form in which for years the doctrine of sovereignty had been enunciated by every department of the government was that referred to above. The relative force of federal and state action, when in conflict, was a question that had been sedulously avoided. Once only, in 1832, had the issue been fairly presented, but the result of the nullification controversy had given no conclusive answer. The Supreme Court had maintained an unbroken line of precedents on

<sup>36</sup> *Essays on the Civil War and Reconstruction* (1897), pp. 4-5.

the double-sovereignty basis. It had asserted the supremacy of the federal laws, so far as they were within the powers granted or implied in the Constitution, but it had admitted that many cases of dispute could arise in which the Judiciary could not be called upon to give judgment. In such questions, of a political rather than a judicial character, the final authority as to the constitutionality of a given law was, by the doctrine of "spheres," undetermined. Though the ultra states' rights school of Calhoun had given a perfectly clear and definite solution to the problem, and Webster on the other hand had been equally explicit in his contradictory answer, it must be admitted that the general course of governmental action, and more important still, perhaps, the prevailing sentiment of the people as a whole, had followed the middle line of which the conservative Madison was a conspicuous adviser. From this standpoint the only constitutional course in case of a conflict of the "sovereignties" was to deny that such a thing was possible, eulogize the Constitution as the greatest extant production of the human intellect, point out the dreadful consequences that would follow the recognition of supremacy in either claimant, and end by compromising the difficulty in such a way as to furnish precedents for both sides in the future."

The secession of South Carolina sounded the knell of the old principle, but President Buchanan adopted the time-honored method of meeting the situation. His message eulogized the Constitution, affirmed the supremacy of the federal government in its sphere, emphasized the rights of the states, and refused to use force to preserve the Union. To Congress he left the problem of finding a compromise that would "terminate the existing dissensions, and restore peace and harmony among the states." Belated attempts were made in Congress to reach a compromise under which the South would remain in the Union.<sup>37</sup> Many resolutions were proposed, the most notable being the "Crittenden Compromise,"<sup>38</sup> which suggested constitutional amendments protecting slavery in the states where it was legal, authorizing domestic slave trade, guaranteeing payment by the United States for escaped slaves, and reviving the 36° 30' line of division between free and slave territories with a prohibition against interference with slavery by Con-

<sup>37</sup> For Senate debates on the compromise proposals, see *Great Debates in American History*, V, 324-380.

<sup>38</sup> *Congressional Globe*, 36th Congress, 2d sess., p. 114. See Mrs. C. Coleman, *The Life of John J. Crittenden, with Selections from his Correspondence and Speeches* (1871).

gress south of that line. It was accompanied by resolutions calling for the repeal of the Personal Liberty Acts, the enforcement of laws against the African slave trade, and a faithful execution of the fugitive slave law. Considerable opinion in the North favored this compromise, especially among those who had large investments in the South.<sup>39</sup> The more radical Republicans were unwilling to make any concession that would result in the extension of slavery.<sup>40</sup>

A committee of the House recommended a constitutional amendment<sup>41</sup> forbidding Congress to interfere with slavery in states where it was legal; but in spite of Lincoln's approval in his inaugural address, only three states voted favorably on this proposal. A Peace Congress, called by the Virginia legislature, proposed a compromise amendment,<sup>42</sup> but no favorable action followed. While opinion in the South was divided on secession, prevalent opinion was opposed to compromise. The argument that prevailed, especially in the Gulf states, was the danger to slavery from a Republican administration and the belief that the South could make better terms out of the Union than in it. Many hoped for a permanent separation, believing that to be the only sure way of preserving their institutions. In the North the *New York Tribune*<sup>43</sup> and abolitionists in general were admitting that the North could not conquer the South, and that the slave states should be allowed to "depart in peace." Horace Greeley, in an editorial, said: "We hold, with Jefferson, to the inalienable right of communities to alter or abolish forms of government that have become oppressive or injurious; and, if the cotton states shall decide that they can do better out of the Union than in it, we shall insist on letting them go in peace." Henry Ward Beecher said:<sup>44</sup> "In so far as the free states are concerned, I hold that it will be an advantage for the South to go off." Many constitutional lawyers in the North held the opinion that, under the Constitution, the federal government could not use force to prevent secession or to compel states which had seceded by the will of their people to acknowledge

<sup>39</sup> See articles by Thurlow Weed in *Albany Evening Journal*, Nov. 24 and 30, 1860, reprinted in part in A. B. Hart, *American History Told by Contemporaries* (1901), IV, 193-195.

<sup>40</sup> See speech by Senator B. F. Wade, in *Congressional Globe*, 36th Congress, 2d sess., 102-103. For Lincoln's opposition to compromise, see his *Complete Works* (ed. by Nicolay and Hay) I, 657-669.

<sup>41</sup> *U.S. Statutes at Large*, XII, 251.

<sup>42</sup> *Senate Misc. Doc. 20*, 36th Congress, 2d sess. See H. Wilson, *History of the Rise and Fall of the Slave Power* (1875), III, Ch. VII.

<sup>43</sup> *New York Tribune*, Nov. 9, 1860.

<sup>44</sup> In a speech in Brooklyn on Nov. 27, 1860.



federal authority. Idealists and pacifists were opposed to the horrors of war.<sup>45</sup> Northern merchants did not wish slavery to interfere with business, and did all in their power to preserve peace.

Meantime, a group of Southern Senators sent to the people of their states a set of resolutions advising that "each of the states should, as soon as may be, secede from the Union" and "provision should be made for a convention to organize a confederacy of the seceding states." By February 4, 1861, secession was completed in six states,<sup>46</sup> and a convention of delegates, chosen by conventions in the states that had passed secession ordinances, established a provisional constitution for "The Confederate States of America" and invited the other slave states to join. Some opinion in the South wished to limit the Confederacy to the slave states and have a homogeneous and harmonious group. Others favored the inclusion of the states in the upper Mississippi Valley, so that the Confederation would include that great river, and would develop a profitable north and south commerce. This would force the border states to enter the Southern system and leave New England isolated. The Alabama Ordinance of Secession, which proposed a convention "for the purpose of consulting with each other as to the most effectual mode of securing concerted and harmonious action," was sent to the governors of Delaware, Maryland, Virginia, North Carolina, South Carolina, Florida, Georgia, Mississippi, Louisiana, Texas, Arkansas, Tennessee, Kentucky, and Missouri. This ordinance was the only one that specifically declared that Lincoln's election was the cause of secession. On March 11, a permanent constitution<sup>47</sup> was adopted, in which Texas also joined. The constitution was ratified by conventions in the seceding states. The secessionists argued that since they had delegated powers to the national government by the acts of conventions in the several states, they must withdraw in the same manner. They followed constitutional precedents in passing secession ordinances and establishing their new confederacy by means of conventions in the states, adopting the theory of Calhoun that in such a body the

<sup>45</sup> See the orations of Wendell Phillips and the poems of Whittier. The attitude of an influential class in the North was well expressed in Oliver Wendell Holmes's "Brother Jonathan's Lament," in *Songs in Many Keys* (1862), pp. 282-284.

<sup>46</sup> South Carolina, Georgia, Alabama, Mississippi, Louisiana, and Florida.

<sup>47</sup> *Confed. Statutes at Large*, 11-22, where the provisional constitution is also printed. The text of the Confederate Constitution printed in parallel columns with that of the Constitution of the United States appears in J. Davis, *Confederate Government*, I, 648-673.

sovereignty of the state was vested. In only three states, Texas, Tennessee, and Virginia, were the ordinances of secession referred to popular vote.

The theory upon which the right of secession was based <sup>48</sup> was that the United States was a confederation of sovereign states, joined in an agreement from which each might withdraw at its pleasure, without any other having the legal right to prevent it. Secession was held to be both a sovereign and a legal right. In holding that it was a sovereign right, it was argued that there can be no legal limitation upon sovereignty, since a sovereign is not subject to law. In holding that it was a legal right,<sup>49</sup> reference was made to the clause in the Constitution which reserves to the states or to the people all powers not delegated by it to the United States nor prohibited by it to the states. It was argued that since no power was delegated to the United States to prevent secession and since no prohibition was placed on the states against secession, the right of secession was reserved to the states or to the people. Secessionists did not view their action as a revolution. It was their sincere belief that it was the action of sovereign bodies that possessed full authority so to act. From this point of view, even after the war, they contended <sup>50</sup> that secession was right in principle; that it was a "lost cause" only because it was overcome by superior force.

The theory of the secessionists was clearly stated in their constitution, although it was closely patterned on that of the United States and declared that the new Confederacy was to be "permanent." In place of "We, the people of the United States," it substituted "We, the people of the Confederate States, each state acting in its sovereign and independent character." It guaranteed

<sup>48</sup> For the Southern argument for secession, see A. P. Upshur, *The South in the Building of the Nation*, IV, 466-500; E. A. Pollard, *The Lost Cause*, Ch. I; U. B. Phillips, "Georgia and States' Rights," in American Historical Association, *Report*, 1901; T. R. R. Cobb, *Inquiry into the Law of Negro Slavery*; C. F. Adams, *The Constitutional Ethics of Secession*, in Massachusetts Historical Society, *Proceedings*, Series XVII; J. L. M. Curry, *The Southern States Considered in Their Relations to the Constitution of the United States and to the Resulting Union*.

<sup>49</sup> The constitutional right of secession was argued in the Senate by R. Toombs. See *Congressional Globe*, 36th Congress, 2d sess., pp. 269-271. For a reply to the constitutional arguments for secession, see Joel Parker, "The Right of Secession," in *North American Review*, July, 1861.

<sup>50</sup> P. C. Centz, *The Republic of Republics, or American Federal Liberty* (1865); A. H. Stephens, *A Constitutional View of the Late War Between the States* (1868); J. Davis, *The Rise and Fall of the Confederate Government* (1881).

the recognition and protection of slavery in any new territory which the Confederation might acquire. It was made the "duty" of a governor to give up fugitive slaves found in his state. It provided that "the importation of African negroes from any foreign country, other than the slave holding states of the United States, is hereby forbidden," and that "Congress shall have power to prohibit the introduction of slaves from any state not a member of the Confederacy."<sup>51</sup> It forbade protective tariffs and the expenditure of public funds for internal improvements. A Confederate official serving in a state might be impeached by a two-thirds vote of each house of the legislature of that state. A two-thirds vote of each house of the Confederate legislature was necessary for the admission of a new state into the Confederacy, the vote in the Senate being by states. In these particulars, which suggest old points of dispute, an attempt was made to guard the rights of the states against the central authority. In order to make the constitution easier to amend, a new convention must be called when demanded by three states, and amendments proposed by the convention became effective when ratified by the legislatures or by conventions in two-thirds of the states.<sup>52</sup>

Certain features were added which had no reference to the sectional controversy, but which were considered to be improvements warranted by experience under the Constitution of the United States. The president's term was fixed at six years and he was made ineligible for reelection. Cabinet members were given the right to appear and speak in Congress on questions pertaining to their departments. No money except the amounts specified in annual estimates of the departments could be appropriated without a two-thirds vote; and the president was given power to veto separate items in appropriation bills.

In his inaugural address,<sup>53</sup> Jefferson Davis, the President of the Confederacy, stated: "Our present condition, achieved in a manner unprecedented in the history of nations, illustrates the American idea that governments rest upon the consent of the governed, and that it is the right of the people to alter or abolish

<sup>51</sup> J. W. Burgess believed that these provisions were intended to induce Maryland and Virginia to join the Confederacy in order to find a market for their slaves in the cotton states. *The Civil War and the Constitution*, I, 118-119.

<sup>52</sup> This is in striking contrast to the Articles of Confederation, which required unanimous consent of the states for amendment.

<sup>53</sup> *The War of the Rebellion; Official Records of the Union and Confederate Armies*, 4th Series, I, 104-106.

governments whenever they become destructive of the ends for which they were established. The declared purpose of the compact of the Union was 'to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity'; and when, in the judgment of the sovereign States now composing this Confederacy, it had been perverted from the purposes for which it was ordained, and had ceased to answer the ends for which it was established, a peaceful appeal to the ballot box declared that, so far as they were concerned, the Government created by that compact should cease to exist. In this they merely asserted a right which the Declaration of Independence of 1776 had defined to be inalienable; of the time and occasion for its exercise they, as sovereigns, were the final judges, each for itself . . . Thus the sovereign States here represented proceeded to form this Confederacy, and it is by abuse of language that their act has been denominated a revolution."<sup>54</sup>

While Davis tried to put into practice Calhoun's theories, nevertheless, when secession was accomplished, and he found himself at the head of a government founded on those theories, but compelled by the necessities of war and of foreign relations to exercise large powers, his administration displayed tendencies toward centralization which provoked much opposition. Governors of several states threatened to "secede from secession," and accused the Confederate government of acts which were "unconstitutional." Acts for conscription, for control of the militia, for impressment of food, and for the regulation of imports and exports were attacked as improper interferences with the sovereign rights of the states. The tradition of the South was unfavorable to executive centralization, and editors of influential papers referred to Davis as "an incubus" who directed the war "from his cushioned seat in Richmond." Other newspapers, friendly to the administration, admitted that "only when our independence is achieved, established, and acknowledged, will the sovereignty of the states be a reality."

In general, the Confederate government was more observant of constitutional limitations during the war than was the federal

<sup>54</sup>Some Southern leaders admitted that their secession was a revolution. Senator Iverson of Georgia said that the secession of a state was "an act of revolution"; and R. E. Lee declared that "secession is nothing but revolution."

government. Its policy in military arrests and in suspending the writ of Habeas Corpus was more liberal, and it did not make its paper money legal tender. It never even organized a supreme court, as it was authorized to do under its constitution, because of the states' rights feeling which such an enlargement of central authority would have created.<sup>55</sup> In many ways, however, it was a "socialized state" in which the government did everything. "It levied directly on the produce of land and fixed prices. It managed the railroads, operated manufacturing establishments, owned merchant vessels, and carried on foreign commerce."<sup>56</sup> Before the end of the war the discontented class in the South was large, and in many quarters it was stated that it was "a rich man's war and poor man's fight." As hope of success diminished, a peace party, composed of those who had opposed secession in 1861, became more insistent, especially in North Carolina and Georgia. It was with considerable difficulty that the Confederate government kept alive the undivided loyalty of its people in the closing period of the war.

#### 4. GOVERNMENTAL POLICY DURING THE WAR

In his inaugural address,<sup>57</sup> Lincoln stated his intention to preserve the Union and to execute the laws of the United States in all parts of the country. He did not attack slavery or even the extension of slavery. He stated that he had no constitutional right to interfere with slavery in the states where it existed, and that he had no objection to a constitutional amendment prohibiting the United States government from ever interfering with slavery in the states. The "right to coerce a state" was not even alluded to. Lincoln aimed to unite the North and to divide the South; therefore he insisted upon the maintenance of the Union and the supremacy of its laws, which he considered of prime importance, and made no attack upon slavery. Lincoln believed, with Webster, that the Union was older than the Constitution, that it was not the creature of the Constitution, but was the result of a historical development. Hence, he held that no state could legally withdraw from the Union, that secession ordinances were "legally void," and that acts of violence against the authority of the United States were

<sup>55</sup> J. C. Schwab, *The Confederate States of America* (1901).

<sup>56</sup> J. F. Rhodes, *History of the Civil War*, p. 394.

<sup>57</sup> J. D. Richardson, *Messages and Papers of the Presidents*.

“insurrectionary or revolutionary according to circumstances.” He insisted that the Union was unbroken, in spite of the secession ordinances of the revolting states, and that he could protect the property of the United States and enforce its authority in all the states.

Lincoln’s policy to preserve the Union at all costs was by no means unanimously supported in the North, even in his own party. Many Republican journals followed the lead of Greeley in the *New York Tribune*, and argued that the right to secede was a revolutionary right and that no coercive measures should be used to prevent it. The mayor of the Democratic city of New York recommended to its council that the city should secede from the state of New York, if necessary to keep its ports open to the free commerce of the world. The Old-Line Whigs declared that if “Black Republicanism turned red” through the shedding of blood against the South, they would “reverse the order of the French Revolution, and save the blood of the people by making those who would inaugurate a reign of terror the first victims of a national guillotine.”<sup>58</sup> The mayor of Republican Philadelphia stated at a peace meeting that “the misplaced teachings of the pulpit, the unwise rhapsodies of the lecture room, the exciting appeals of the press, on the subject of slavery, must be frowned down by a just and law-abiding people.” The abolitionists were not strong Union men. Wendell Phillips said:<sup>59</sup> “Here are a series of states, girdling the Gulf, who think their peculiar institutions require that they should have separate government. They have a right to decide that question without appealing to you or me.” Douglas, the leader of the Northern Democrats, said that the federal government had no right to hold forts in the “seceding states” unless the purpose was to reduce those states to subjection, which he believed unthinkable. Even in Lincoln’s Cabinet were men with strong states’ rights views, determined upon peace at any cost.

Agents of the Confederate government attempted to negotiate in Washington for the recognition of their independence, the surrender of federal property in the South, and the adjustment of monetary losses through such surrender. Secretary of State Seward attempted, by a policy of delay and conciliation, to avoid a decision. Finally Lincoln determined to save the Union at all costs

<sup>58</sup> See the speech of J. S. Thayer at the peace meeting of Jan. 31, 1861, in New York City.

<sup>59</sup> In his address at New Bedford, Apr. 9, 1861.



and to send aid to the federal forts in the South. Negotiations with the Confederate commissioners were broken off, and the attempt of the South to capture Fort Sumter marked the beginning of actual hostilities. With that act, the doubts of the North were dispelled, and public opinion in general rallied to the defense of the Union. Douglas issued an appeal to loyal Northern Democrats to support the government, and the Whigs were equally loyal. In a short time many meetings were being held throughout the North in which speakers aroused the people to take up arms. Arkansas, Virginia, North Carolina, and Tennessee joined the seven states that had seceded, but by tactful methods the apprehension of the slave-holders in the border states was allayed, and as the seriousness of the struggle became apparent, secession became less popular in those states.

In his message to Congress on July 4, after hostilities had begun, Lincoln definitely took his stand on the theory of national sovereignty. Defining sovereignty as "a political community without a political superior," he said: "Tested by this, no one of our states except Texas ever was a sovereignty. And even Texas gave up the character on coming into the Union . . . The states have their status in the Union, and they have no other legal status. . . . The Union is older than any of the states, and, in fact, it created them as states. Originally some dependent colonies made the Union, and in turn the Union threw off their old dependence for them, and made them states, such as they are. Not one of them ever had a state constitution independent of the Union." To Lincoln, secession ordinances were null and void. The destruction of the Union could result only from successful revolution, not from law. He said: "No government proper ever had a provision in its organic law for its own termination." Secession was rebellion and must be met by all the power of a nation fighting for its life. Congress accepted this doctrine, and resolved that the war was "not waged in any spirit of oppression, or for the purpose of conquest or subjugation, or for the purpose of overthrowing or interfering with the rights or established institutions of the states, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several states unimpaired."<sup>60</sup>

In time of war the executive department of government inevitably gains in power; the slow deliberation of the legislative

<sup>60</sup> *House Journal*, 37th Congress, 1st sess., p. 123.

branch is not conducive to the speed of decision and the unity and efficiency of policy which war demands. Neither is the freedom of speech and opinion, which is cherished as a fundamental liberty in time of peace, permissible in time of war. Lincoln became virtually a dictator, and exercised extensive war powers. Wendell Phillips asserted that Lincoln was "a more unlimited despot than the world knows this side of China." The Roman proverb "In the clash of arms the laws are silent" was given many illustrations. Lincoln believed that rights of war were vested in the President, and that as President he had extraordinary legal resources which Congress lacked. In the years before the Civil War the powers of Congress under the "necessary and proper" clause had been so diminished by narrow construction that, if the Union were to be saved, it was necessary to fall back on a source of power that had not been subjected to this dissolving process. By executive proclamation Lincoln increased the army and navy of the United States, though there was no constitutional provision for such action. He proclaimed a blockade of the Southern ports,<sup>61</sup> although such a proclamation is an incident of war, and war had not been proclaimed or recognized—nor could it be under Lincoln's theory of the Union. He authorized the commander of the federal forces to suspend the writ of Habeas Corpus and to make military arrests, although the right to suspend this writ is specifically given to Congress in the Constitution, and by decision of the Supreme Court<sup>62</sup> was denied to the President.

When Congress assembled, Lincoln admitted the unconstitutionality of his acts, but justified them on the ground of "a popular demand and a public necessity." Congress ratified his actions and conferred upon him large powers, permitting the suspension of the writ of Habeas Corpus whenever he considered it necessary and permitting to him great freedom in the interpretation of its laws. It was generally held that a "higher law," that of self-preservation, had superseded the Constitution. The substitution of a "popular demand" for a constitutional basis for executive authority was characteristic of the times. The idea of a govern-

<sup>61</sup> *U.S. Statutes at Large*, XII, 1258-1259.

<sup>62</sup> *Ex parte Merryman*, *Fed. Cases*, No. 9, 487 (1861). Tucker's *Blackstone* and Story's *Commentaries* assumed without discussion that Congress alone could suspend the writ. The Supreme Court had suggested that opinion in *Ex parte Bollman*, 4 *Cranch*, 75; and the debate in Congress over the suspension of the writ in connection with Burr's conspiracy contained no suggestion that the President possessed such power. *Annals of Congress*, 9th Congress, 2d sess., 402 ff.

ment limited by the written document of a past generation was forgotten in the heat of war. A new principle appeared in the constitutional system of the United States, that of a temporary dictatorship.

The necessities of the war compelled Lincoln to take an inconsistent attitude toward the South. In Lincoln's theory the seceding states could not leave the Union and had not done so. He held that groups of men in those states, too numerous and powerful to be dealt with by the ordinary civil authority, were in illegal insurrection against the United States. He did not wish to recognize the Confederation as a belligerent power or to admit that a state of war existed between two nations. His theory, however, would compel the Confederate armies to be treated as a group of traitors and the Confederate navy as manned by pirates. This policy would have been impossible and barbarous. Hence the federal government was compelled to deal with the Confederate States as with a sovereign, belligerent power, while at the same time claiming sovereignty over their citizens. The Non-Intercourse Act, the Confiscation Acts, and the Emancipation Proclamation were examples of the doctrine that the federal government continued to exercise authority in the South; the arrangements for exchange of prisoners, paroles, the blockade, and the treatment of privateers were examples of a virtual recognition of a state of belligerency. In the struggle between those who upheld the restraints of the Constitution and those who considered only the limits of international law, the government practically escaped all restrictions in dealing with its insurgent citizens.

Difficult questions were also raised as to the extent of the government's authority over the life, liberty, and property of persons in the states not in insurrection, and as to the proper department for exercising such power. Southern sympathizers were arrested in all parts of the country and confined in forts and prison camps, without any information as to the charges against them. For a year and a half after the outbreak of the war the arrest and detention of "prisoners of state"<sup>63</sup> was carried on without formal statement as to the principles of the question. In September, 1862, Lincoln issued a proclamation ordering that all persons "discouraging volunteer enlistments, resisting military drafts, or guilty of any disloyal practice affording aid and com-

<sup>63</sup> On military arrests, see Parker, *Constitutional Law with Reference to the Present Condition of the United States* (1862).

fort to the rebels'' should be subject to martial law, and that the writ of Habeas Corpus should be suspended in respect to persons held by military authority. By this proclamation the President assumed the right to proclaim martial law and to suspend the writ of Habeas Corpus at his own discretion throughout the country. The Attorney-General and other eminent lawyers of the time justified these acts by arguments drawn from the necessities of the period rather than from respect for the past. Chief Justice Taney, however, opposed this assumption of power.

The practice grew up early in the war of bringing arrested persons for trial before military commissions or courts-martial. This created a complete judicial system outside the ordinary civil and criminal courts, and gave an accused person no security against the arbitrary will of a military commander. Numerous efforts were made to secure a decision from the civil judiciary as to the validity of these extraordinary tribunals, but not until the war had ended was the question decided. In 1866, in the case of *Ex parte Milligan*,<sup>64</sup> the Supreme Court denied any power in either executive or legislative department to suspend the operation of the laws protecting civil liberty. It held that the suspension of the privilege of the writ of Habeas Corpus did not establish martial law, and that ''martial law cannot arise from a threatened invasion. The necessity must be actual and present; the invasion real, such as effectually closes the courts and deposes the civil administration. . . . Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction.''

The government also encroached upon the freedom of the press. Certain papers in New York and Brooklyn were indicted by federal grand juries for rebellious utterances and were excluded from the mails. In a report made to a House committee, Postmaster-General Blair stated that ''a power and a duty to prevent hostile printed matter from reaching the enemy, by the aid of the United States mails, exists in time of war, and in the presence of treasonable and armed enemies of the United States, which do not exist in time of peace, and in the absence of criminal organizations.''

This was claimed as a constitutional power, and was distinguished from the earlier attempts to exclude abolition literature from the mails on the ground that such power could be exercised in war time, but not in peace, and must be exercised

<sup>64</sup> 4 *Wallace*, 2.

by the Postmaster-General and not by the individual postmasters. This view was sustained by Congress.

Writing in 1833, Story said:<sup>65</sup> "No one can doubt the importance, in a free government, of the right to canvass the acts of public men and the tendency of public measures, to censure boldly the conduct of rulers, and to scrutinize closely the policy and plans of the government." He held that "libels and inflammatory publications, the object of which is to excite sedition against the government, to stir up resistance to its laws, to urge on conspiracies to destroy it" might be punished. The same point of view was held by Cooley in 1868, in saying that "it is difficult to conceive of any sound principle on which prosecutions for libels on the system of government can be based, except when they are made in furtherance of conspiracy with the evident intent and purpose to excite rebellion and civil war."<sup>66</sup>

The armies of the United States had always previously been raised by voluntary enlistment, although during the War of 1812 Secretary of War Monroe suggested to Congress several plans for compulsory military service. In the Civil War the policy of compulsory service was adopted. The passage of a federal law<sup>67</sup> ordering a draft of all men liable for military duty was severely criticized,<sup>68</sup> especially by the Democrats, because it contravened the principle of States' rights to which they were bred. It was also opposed by the poor who were unable to secure substitutes or buy exemption. In New York, the East Side population, who were mainly foreign-born, and who recognized an ancient grievance in compulsory military service, broke into riots. Throughout the war the draft was unpopular. It was badly administered and there was considerable scandal in connection with "bounty jumpers" and the activities of substitute brokers. In the South the charge was made that the Northern armies were recruited from European mercenaries. Negro troops also were enlisted, which further enraged the South.

The Civil War period thus gave a marked impetus to centralizing tendencies in the American constitutional system. It destroyed the dogma of States' rights and enabled the national government to assume many powers that had previously been left to the states.

<sup>65</sup> *Commentaries on the Constitution*, Secs. 1887-1888.

<sup>66</sup> *Constitutional Limitations* (7th ed.), 613-614.

<sup>67</sup> *U.S. Statutes at Large*, XII, 731-737.

<sup>68</sup> The constitutionality of this law was raised in only one case, in a state court, and was there upheld. See *Kneedler v. Lane*, 45 *Pa. St.*, 238 (1863).

The association of the doctrine of States' rights with that of secession prevented serious resistance to this process. The territorial unity of the nation was held to outweigh all other considerations, and constitutional objections which in earlier times would have been considered valid were ruthlessly swept aside. It also enabled the government to encroach upon the civil liberty of the individual. In the earlier period of our history it was believed that the American Constitution in a peculiar way safeguarded the rights of the citizens, not only by prohibitions upon the government in the bill of rights but also by the strict limitation of the national government to its delegated powers, and the limitation of one department of government by another under the system of checks and balances.

The development of liberal construction under implied powers had already done much to strengthen the national authority. With the development of the war power, the prohibitions of the Constitution were almost wholly disregarded. The rights of citizens to life and liberty were among the first to go by the board. The whole spirit of war-time legislation and of executive action showed that the principle of limited and delegated powers exerted but little restraint upon the government. The war also prevented the normal restraint exerted by the separation of departments. The judiciary, which was intended to check the other two more aggressive departments, was of little importance during the war. In his debates with Douglas, Lincoln had attacked the doctrine of judicial supremacy.<sup>69</sup> He quoted Jefferson<sup>70</sup> to prove that the judges should not be regarded as the final arbiters on constitutional questions, and stated that the power claimed for the Supreme Court would "reduce us to the despotism of an oligarchy." In his inaugural address, he again opposed judicial interference in political affairs. He said: "The candid citizen must confess that if the policy of the government, upon vital questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made . . . the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal." After Taney's decision opposing the President's right to suspend the writ of Habeas Corpus, Lincoln denied the right of judicial interference, and asserted that "the judicial machinery seemed as if it had been

<sup>69</sup> *Lincoln and Douglas Debates*, pp. 92-93.

<sup>70</sup> *Works*, XII, 163.



designed not to sustain the government, but to embarrass and betray it."<sup>71</sup> Not until the period of reconstruction was over was the Supreme Court able to regain its former prestige as the final arbiter of the Constitution. President and Congress, under the plea of "necessity," ignored the doctrine of delegated powers and the explicit prohibitions of the Constitution. The war powers of the President and a broad interpretation of the "necessary and proper" clause by Congress placed these departments above the law.

As long as the war lasted, President and Congress preserved a fair degree of harmony in the exercise of their large powers, with the President occupying the dominant position. In the work of reconstruction, Congress asserted its controlling power and relegated the President to the background. When the military result of the war was settled, the legal and political results became of great importance. Even during the war, however, the coming contest between the President and Congress over the policy of reconstruction was foreshadowed. In December, 1863, Lincoln issued a proclamation looking toward the restoration of the seceded states to their position in the Union. He declared that whenever 10 per cent of the qualified voters of 1860 in any state should take an oath of allegiance to the United States, accept the Acts of Congress and the proclamations of the President concerning slavery, and set up a state government, he would recognize that government as a state. The President's opponents in Congress considered this proposal as a usurpation of executive power and as too lenient to the South. They passed a bill declaring that the seceded states were no longer in the Union and required that, before one of them could be readmitted, a clear majority of its voters must take the oath of allegiance, and that it must abolish slavery, repudiate the debt incurred in the support of the war, and exclude certain classes from office. Lincoln defeated the bill by a "pocket veto" and was accused of a "studied outrage on the legislative authority of the people." In cutting off the western counties of Virginia and admitting them as a new state, Congress assumed the power of imposing conditions upon a new state as the price of its admission. West Virginia was required to adopt the gradual emancipation of all slaves under twenty-one years of age, declare all children born of slave parents thereafter free, and prohibit the immigration of slaves for permanent residence,

<sup>71</sup> *Works*, VII, 101.

before Congress would admit it to statehood. This was a further advance of national control.

The Constitution says: "New States may be admitted by the Congress into this Union." It was probably the intention of the framers that Congress might impose conditions upon the new states.<sup>72</sup> At the time of the admission of Louisiana to statehood in 1811-12, the Federalists bitterly opposed its admission as an equal state, and Josiah Quincy stated that the admission of new states from acquired territory on equal terms with the old was sufficient ground for a dissolution of the Union. The principle of admitting new states on a basis of equality with the old was followed in practice, however, until the Civil War. The period of loose construction that set in with the war led to a reopening of the question.<sup>73</sup> Many argued that Congress is the agent that creates states and that Congress may confer on them such powers as it chooses, subject only to the positive prohibitions in the Constitution. There was no necessity that the states should be equal. The powers of each state depended upon the special act by which it was admitted. The older theory maintained that when a new state was admitted it possessed every power that was exercised by any other state. Congress did not "create" states; it "admitted" them. Once in the Union, all had equal status.<sup>74</sup>

The centralizing tendency of the war was evident in many ways. It hastened the consolidation of capital, already evident, since the needs of the government encouraged large-scale business. The large currency issues furnished abundant capital for investment, and rising prices and heavy taxes demanded reduction in the costs of operation and made a combination of processes in a single establishment more profitable. Besides, combinations of manufactures enabled them to exert more influence on the government, especially in tariff legislation. Many factors combined to drive out the small producers and to consolidate business interests into larger units. With the rise in prices and the tightening of capitalist control, labor became more discontented and a stimulus was given to labor organization. Many new trades were unionized

<sup>72</sup> See letter written by Gouverneur Morris in 1803, quoted by Judge Campbell in the Dred Scott Case, 19 *Howard*, 507.

<sup>73</sup> It was extensively discussed in 1868-70 in connection with the bills restoring the representation of the Southern states in Congress.

<sup>74</sup> On the constitutional right of Congress to impose conditions on the admission of new states, see *Coyle v. Oklahoma*, 221 *U. S.*, 559 (1911). For earlier decisions, see *Pollard's Lessee v. Hagan*, 3 *Howard*, 212 (1845), and *Withers v. Buckley*, 20 *Howard*, 84 (1857).

and the methods of modern labor agitation came into existence. Demands for relief through legislation began to appear.

As Muzzey says:<sup>75</sup> "This concentration of industrial life was simply one aspect of the general centralizing tendency of the war. Our country was first welded into a true union in the fierce fires of that ordeal. The national state replaced the federation of states. The war was not only the triumph of the North over the South, of freedom over slavery—it was also a triumph of nationalism over states' rights, of Webster over Calhoun. Besides creating a national currency, a national banking system, a national army, and national taxes, the war extended and enhanced the power of the central government in a score of ways. All the jealous restrictions of a former generation were broken through. Congress assessed a direct tax upon the states, raised a national militia within their borders, exercised full sovereignty in all the territories, gave homesteads to Western farmers, endowed colleges in all the states for the promotion of agriculture and the mechanical arts, made large grants of land to a Pacific railroad and underwrote its bonds. The National Republican of 1825, a John Quincy Adams or a Henry Clay, would have stood aghast at the nationalism of the Republican of 1865."

## 5. FOREIGN POLICY DURING THE CIVIL WAR PERIOD

Seward, who became Secretary of State under Lincoln, advised in 1861 the development of quarrels with France and Great Britain as a means of uniting the American people and preventing the threatened disunion over slavery and States' rights. The more moderate policy of President Lincoln, Charles Sumner, chairman of the Senate Committee on Foreign Affairs, and Charles Francis Adams, minister to England, tried to avoid difficulties abroad. With the outbreak of hostilities with the South, the North decided upon a policy of blockade,<sup>76</sup> for the purpose of exhausting the South by cutting off her exports of cotton and her imports of manufactured materials. This decision changed the status of the rebellion, which the North had viewed at first as a domestic affair, and compelled a recognition of a state of war. The Supreme Court declared<sup>77</sup> that

<sup>75</sup> *The United States of America*, I, 613-614.

<sup>76</sup> *U.S. Statutes at Large*, XII, 1258. On the blockade, see E. S. Maclay, *History of the United States Navy*, II, 225-281; H. L. Wait, "The Blockade of the Confederacy," in *Century Magazine*, XXXIV, 914-928 (1898).

<sup>77</sup> See the case of the *Amy Warwick*, 2 *Sprague*, 123, and the Prize Cases, 2 *Black*, 635.

the blockade could rest on no other basis than that the South was enemy country and that the government's act constituted a recognition of belligerency or a state of war.

The blockade policy created numerous controversies with European countries. The United States as a belligerent, trying to prevent commerce, took a somewhat different attitude from what it had assumed in the time of the European wars when it was a neutral, interested in protecting its commerce. Our courts evolved the doctrine of "continuous voyage,"<sup>78</sup> holding that a vessel carrying contraband goods, ultimately destined to the Confederacy, might be seized even on a voyage between two neutral parts. In general, this doctrine was recognized by the European powers. We also regretted that we had refused to adhere to the Declaration of Paris, which forbade the use of privateers, and agreed to do so, hoping to have the Confederate privateers declared pirates. When England and France pointed out that our belated adherence to that doctrine could not apply that rule to the Confederacy, the offer to join in the Declaration was withdrawn. The United States insisted on a rigid interpretation of the duty of neutral nations to prevent their citizens from aiding the South.

Both sides in America used propaganda extensively to influence public opinion abroad. Russia, Italy, Germany, and Denmark were friendly to the North. France was eager to secure the breaking up of the Union. Louis Napoleon had plans for the creation of a French colonial empire in America, and welcomed the possibility of a division that would weaken the United States. The most important relations were with England, which was dependent upon Southern cotton; and the South had high hopes of aid from that country. Northern opinion counted on British sympathy, because it looked upon the war as a contest to destroy slavery;<sup>79</sup> Southern opinion believed that "cotton was king" and that European demand for cotton would force the raising of the blockade. Public opinion in England, at first, seemed overwhelmingly pro-Southern.

<sup>78</sup> See the cases of the *Bermuda*, 3 *Wallace*, 514 (1865) and the *Peterhoff*, 5 *Wallace*, 28 (1866). These decisions mark the surrender of the traditional American stand on the subject of the commercial rights of neutrals.

<sup>79</sup> Lowell, in his second series of *Biglow Papers*, wrote:

We know we've got a cause, John,  
Thet's honest, just, an' true;  
We thought 'twould win applause, John,  
Ef nowheres else, from you.

The correspondence between Charles Sumner and John Bright represented the same point of view.

The governing and aristocratic classes were outspoken in their sympathy for the Confederacy.<sup>80</sup> The *Times* urged action on behalf of the Confederacy, and the Earl of Malmesbury wrote in 1862: "The feeling for the South is very strong in society."<sup>81</sup> This feeling was partly due to the aristocratic traditions of the Southern planters. The upholders of the old Whig tradition viewed the effort of the North to bind to itself a reluctant South as a new contest of freedom against oppression. The government saw the diplomatic advantage of playing off one republic against the other. The cotton manufacturers were bitter against the blockade that cut off their supply of American cotton. Other manufacturers favored the South as a market for their goods, especially after the highly protective Morrill Tariff was adopted by the national Congress. Believing in the policy of free trade, English leaders asserted that "the Yankees are after all only fighting for the tariff." Gladstone believed that "we may anticipate with certainty the success of the Southern states so far as their separation from the North is concerned."

On the other hand, the Dissenters, headed by John Bright,<sup>82</sup> favored the North. The famous preacher, Spurgeon, prayed: "God bless and strengthen the North; give victory to their arms." After the Emancipation Proclamation, English public opinion, especially among the laboring classes, supported the North. Informal representatives sent abroad did much to educate public opinion in England on the issue between free and slave labor, and Lincoln himself wrote a public letter to the workingmen of London. The efforts of Henry Ward Beecher were especially effective.<sup>83</sup> It became increasingly difficult for Great Britain to take any action that seemed to support a cause that was associated with slavery. Besides, bad harvests made Northern wheat more important than Southern cotton; and many held that the cutting off of the American cotton supply might ultimately work to England's advantage by stimulating production elsewhere that would relieve her of her dependence upon America. In 1861 England recognized the belligerency of the Confederacy for the purpose of "bringing the

<sup>80</sup> Note the title of E. A. Freeman's book, published in 1863: *History of Federal Government from the Foundations of the Achaean League to the Disruption of the United States*.

<sup>81</sup> *Memoirs of an ex-Minister*, II, 273.

<sup>82</sup> See John Bright's *Speeches on the American Question*, ed. by F. Moore (1865).

<sup>83</sup> For his address at Liverpool, Oct. 16, 1863, see A. Johnston, *American Orations* (1927), II, Pt. II, 93-122.

Mexican faction opposed to him, knowing that Maximilian could not maintain his position without French aid. We did, however, insist that Austria should not send troops to Mexico in his defense. By these events the Monroe Doctrine was established more firmly than ever, and received practical recognition from Spain, France, and Austria. It was, in fact, an expression of the Monroe Doctrine, which President Grant formulated in 1870, when he said: "Hereafter no territory on this continent shall be regarded as subject to transfer to a European power."

Hostility to Great Britain, because of her attitude during the Civil War, remained for some years the most important influence on our foreign policy. In 1867 the House of Representatives declared that the union of the British provinces in forming the Dominion of Canada constituted such a change in the status of European territory in America as to be a violation of the Monroe Doctrine. The decline of our merchant marine, due to a number of causes, was laid to the lax enforcement of neutrality by England and the depredations of the English-built Confederate destroyers. The Fenian movement, a nationalistic and republican Irish agitation, planned to use the United States as a base for invading Canada and forcing England to grant independence to Ireland. Thousands of Irish had emigrated to America, become American citizens, and served in the Union armies, and were available for such an undertaking. The political influence of Irish leaders was so powerful in America that acts were passed by Congress which seemed to England to indicate sympathy with their program. The English press and the English literature of the period were openly unfriendly to the United States.

Extravagant claims for damages arising out of Great Britain's lax neutrality policy were made by the United States. Sumner<sup>87</sup> demanded direct damages, as compensation for losses to American shipowners and shippers caused by Confederate cruisers, and indirect damages, resulting from the substitution of the British merchant marine for that of the Americans in the world's carrying trade, and from the prolongation of the war, amounting to two and one-half billion dollars. He hoped to secure possession of Canada as part payment of the immense sum demanded. There was a widespread belief in England that colonies were unprofitable, and many "little Englanders," influenced by the doctrines of the Manchester

<sup>87</sup> See his speech in the Senate on Apr. 13, 1869, *Works* (1874-1883), pp. 53-93.



School, were willing to give up their overseas possessions. Cobden, a leader in this movement, wrote to Sumner in 1849 that "Nature had decided that Canada and the United States must become one for all purposes of intercommunication; whether they shall be united in the same federal government must depend upon the two parties to the union. I can assure you that there will be no repetition of the policy of 1776, on our part, to prevent our North American colonies from pursuing their interests in their own way." Sumner hoped to remove a cause for dispute with Great Britain and to take a peaceful step in our inevitable expansion over the entire continent.

While the immediate effect of Sumner's proposal, which received considerable popular support in the United States, and created bitter indignation in England, delayed a settlement of the claims controversy, the two governments were desirous of reaching a settlement. After informal conversations between leading diplomats of both countries, an able commission met at Washington in 1871, and agreed to submit to arbitration the various issues arising from the war.<sup>88</sup> This was one of the greatest steps ever taken by two nations for the settlement of international disputes by judicial process. Great progress was made during this period in securing a recognition by foreign governments of the right of their citizens to transfer their allegiance to the United States by naturalization. Diplomatic relations were also extended in China and Japan; and the United States, in spite of its attitude toward Europe in the Monroe Doctrine, gradually adopted the policy of coöperating with the European nations in the affairs of Asia.

The desire for expansion was still strong.<sup>89</sup> Seward thought of securing the annexation of Hawaii, took steps toward the purchase of the Danish West Indies, and attempted to purchase or annex various islands in the Caribbean area. Later, intervention to put down insurrection in Cuba was seriously considered.<sup>90</sup> In President Johnson's message in 1868 he said: "Comprehensive national policy would seem to sanction the acquisition and incorporation into our Federal Union of the several adjacent continental and insular communities as speedily as it can be done peaceably, lawfully, and without any violation of national justice, faith, or honor." Oppo-

<sup>88</sup> For the Geneva Award, see *House Executive Docs.*, 42d Congress, 3d sess., I (1873).

<sup>89</sup> T. C. Smith, "Expansion After the Civil War," in *Political Science Quarterly*, XVI, 412-436 (1901).

<sup>90</sup> *House Executive Docs.*, 44th Congress, 1st sess., XII, No. 90, 3-11.

sion to expansion was strong in the Senate,<sup>91</sup> and all of the treaties for the acquisition of territory, except for the purchase of Alaska,<sup>92</sup> were defeated. While the legend of Russian aid to the North during the Civil War period created a sentimental public opinion in favor of this purchase, it was generally viewed as a favor to Russia rather than as a valuable acquisition by the United States.<sup>93</sup> It was frequently referred to as "Seward's Folly." Sumner approved the purchase because it would "set a watchful Yankee on each side of John Bull in his far western Canadian possession," and would "drive one more monarch from this continent." Many feared the incorporation into the Union of tropical territories, where self-government had never flourished, and where free labor was never successful. Such territory, it was argued, was not suitable for the expansion of the white race. The idea that we might hold such territory as dependencies had not yet arisen. Many persons in the North opposed expansion because it was associated in their minds with the efforts of the Southern interests to expand the area of slavery before the Civil War. After 1875 the people of the United States were satisfied with the extent of their territory, and the idea became established that further expansion was contrary to our national policy. Not until the war with Spain in 1898 was the issue reopened.

A significant contribution to international law was made by the United States during the war. There were no established rules as to the legitimate methods and practices of land warfare. At the request of President Lincoln, Francis Lieber prepared a code of "Instructions for the Government of the Armies of the United States in the Field."<sup>94</sup> This code, based upon liberal and humane principles, proved its usefulness in actual warfare and was reissued without modification for the government of the armies of the United States in the war with Spain. It was freely drawn upon by the committee of codification of the Brussels Conference of 1874 and in the conventions adopted by the Hague Peace Conference in 1899. The Supreme Court in 1899 said: "It is, as we think, historically accurate to say that this government has always been, in its views,

<sup>91</sup> See the speech of Carl Schurz on Jan. 11, 1871, in his *Speeches, Correspondence, and Political Papers*, II, 71-122.

<sup>92</sup> *Senate Executive Doc. 17*, 40th Congress, 1st sess. The text of the treaty is in *U. S. Statutes at Large*, XV, 539-543. For Sumner's speech on the advantages of the purchase see his *Works*, XI, 216-232.

<sup>93</sup> O. S. Straus, *The American Spirit* (1913).

<sup>94</sup> Issued as General Orders, No. 100 (1863). It is printed in Wilson and Tucker's *International Law*, Appendix I. For Lieber's ideas on international law, see also his *Miscellaneous Writings* (2 vols., 1861).

among the most advanced of the governments of the world in favor of mitigating, as to all non-combatants, the hardships and horrors of war.' ' 95

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\* The Buena Ventura, 175 U. S. 384.

## CHAPTER XII

### POLITICAL THOUGHT OF THE PERIOD OF RECONSTRUCTION

#### 1. POLITICAL THEORY OF RECONSTRUCTION

The Constitution made no provision for restoring government in a conquered state. Congress believed that restoration was part of the lawmaking function; the President believed that it was within his war powers as commander-in-chief of the army and navy. He had established military law and could withdraw it. He had confidence in the South, and after demanding certain fundamental guarantees, was willing to allow it to settle its own problems. When military authority was withdrawn, the latent authority of the states would be resumed. Congress feared that the states, if given a free hand, would undo much that had been accomplished during the war. It demanded laws and constitutional amendments to restrict state authority and to protect the former slaves. The President was in a position to act first, but after 1867 Congress took the question out of his hands and carried out a program of its own.

In the Congressional discussions over reconstruction various theories appeared as to the status of the Southern states.<sup>1</sup> The Southerners, in accordance with their doctrine of States' rights, believed that the states still existed, with power unimpaired; and that when they accepted national authority they should immediately resume their places in the Union without restrictions. The presidential theory held that the states were indestructable and still existed, but that their officials were insurgents against the United States. When the President pardoned those who had resisted the Union, the people of the state might then form a government and be restored to their full rights in the Union. These theories agreed that the states were not destroyed by attempted secession. Charles Sumner, supported by a group in the Senate, believed that the states that seceded had committed treason, forfeited their constitutional rights, and "committed suicide."<sup>2</sup> The states no longer

<sup>1</sup> See A. Johnston, *American Orations* (1927), II, Pt. II, 129-190.

<sup>2</sup> For a statement of this theory, see C. Sumner, "Our Domestic Relations, or How to Treat the Rebel States," in *Atlantic Monthly*, Oct., 1863; also the resolutions introduced by Sumner in the Senate, Feb. 11, 1862.

existed, but the people of the states were completely under the authority of the national government. They had returned to territorial status. Hence, Congress could determine the conditions under which the states might be readmitted into the Union. This doctrine was in accordance with the spirit of nationality that received so great a stimulus during the war. Sumner was an uncompromising theorist, imbued with the humanitarian doctrine of the equality of black and white. He insisted on full political and civil rights for the negro.

Thaddeus Stevens, leader of the House, agreed that the states had ceased to exist, but viewed them as "conquered provinces," as if the war had been waged against a foreign power. He argued that the South had rejected the Constitution and had no right to claim its protection. Congress might act with regard to the people and territory of the South as it saw fit; as rebels they had no "standing in court." He took a severe attitude toward the South and favored drastic measures. Stevens opposed the presidential policy because it dealt too leniently with the South; Sumner, because it did not include negro suffrage. The theory that was finally accepted by Congress was somewhat of a compromise between the liberal views of the South and of the President and the radical views of Sumner and Stevens. Many believed that to restore the states too easily would destroy the results of the war. On the other hand, they were unwilling to strengthen the national power to the degree that the "state suicide" or "conquered province" doctrines demanded. They adopted rather the "forfeited rights" theory, holding that secession did not destroy the states or take them out of the Union, but that it did deprive them of some of their rights.<sup>3</sup> The states remained in a condition of suspended animation, with Congress having the power to determine the terms on which their full status might be resumed.

Lincoln announced his plan of reconstruction in his Proclamation of Amnesty and Reconstruction of December 8, 1863.<sup>4</sup> In his annual message of the same date, he urged the propriety of the proclamation, and expressed the opinion "that nothing is attempted beyond what is amply justified by the Constitution."<sup>5</sup> He recognized the continued existence of the states in rebellion as states

<sup>3</sup> The "forfeited rights" theory was adopted by the Supreme Court in *Texas v. White*, 7 *Wallace*, 700 (1868).

<sup>4</sup> *U.S. Statutes at Large*, XIII, Appendix VII-IX. On Lincoln's plan of reconstruction, see S. S. Cox, *Three Decades* (1885), Ch. XVII.

<sup>5</sup> *Complete Works* (ed. by Nicolay and Hay), II, 442 ff.

in the Union. He viewed the rebellion as the act of combinations of disloyal persons in the states, and not as the acts of the states themselves. The states could not be disloyal, but their governments might be subverted by disloyal persons. The work of reconstruction, therefore, was to place loyal persons in control of the state governments. Moreover, the plan involved the principle that reconstruction was an executive problem. The President, through the power of pardon, might create a loyal class in a state and support it in organizing a loyal government in that state. On these points Lincoln's theory was essentially similar to the doctrine of "restoration" under which the war was begun. It was held that there was "not one of these states in which there were not ample numbers of Union men to maintain a state government after the Rebellion shall have been put down."

Congress took this view at first and expressed it in the resolution on the nature and object of the war in 1861. The shock of war worked a change in Congress and similar resolutions were voted down by increasing majorities. The Democrats consistently held to the "restoration" theory.<sup>6</sup> It was stated by Pendleton as follows: "These acts of secession were either valid or invalid. If they are valid, they separated the state from the Union. If they are invalid, they are void; they have no effect; the state officers who act upon them are rebels to the federal government; the states are not destroyed; their constitutions are not abrogated; their officers are committing illegal acts, for which they are liable to punishment; the states have never left the Union, but so soon as their officers shall perform their duties, or other officers shall assume their places, will again perform the duties imposed, and enjoy the privileges conferred by the federal compact, and this, not by virtue of a new ratification of the Constitution nor a new admission by the federal government, but by virtue of the original ratification, and the constant, uninterrupted maintenance of position in the federal government since that date." This view was held in the Democratic conventions of all the states, and in the national Democratic Convention of 1868.

Lincoln's opinion at first was similar. He stated that "when the resistance ceased and the national authority was recognized, the states would be immediately restored to their practical relations to the Union." As long as slavery was not a point of attack, the restoration theory and the presidential theory were much the same.

<sup>6</sup> S. J. Tilden, *Writings and Speeches* (ed. by J. Bigelow, 1885), I, 399-407.



With the adoption by Lincoln in September, 1862, of an anti-slavery policy, a new element was added to the presidential theory. It included the abolition of slavery, and a recognition of the anti-slavery laws and proclamations in the amnesty oath. Accordingly, Lincoln offered pardon to all but certain excepted classes in the South if they would take an oath of allegiance to the Union and accept the recent laws and proclamations concerning slavery. When citizens numbering one-tenth of the vote of that state in 1860 had taken the oath, they might establish a civil government, which would be recognized and supported by the national authority. Lincoln admitted that he had no authority over the readmission of Senators and Representatives from such a state into Congress. In accordance with this plan the governments of Louisiana, Arkansas, and Tennessee were reconstructed in 1863-1865, and the legality of these governments was always stoutly maintained by Lincoln. The Pierpont government in Virginia was recognized as reconstructed from the beginning.

Lincoln's plan was favored by Secretary of State Seward, was in line with many of the resolutions and acts that had been passed by Congress, and was supported by various dicta of the Supreme Court.<sup>7</sup> It aroused enthusiasm in the North, where there was little popular desire to punish the South, and was followed by efforts in several states to reorganize along the lines prescribed. Radical leaders, especially in Congress, took alarm and made efforts to prevent further progress in line with this program. They believed that Lincoln's policy was too mild, insisted upon negro suffrage, and stirred up congressional jealousy against the President, insisting upon the right of Congress to determine the policy of reconstruction. The Wade-Davis bill, passed by Congress July 2, 1864,<sup>8</sup> provided that military governors should administer the affairs of the Southern states until the war ended, and that civil government should then be restored when half the male white citizens took the oath of allegiance. The work of restoration in the state must be the work of a state convention from which those who had held office in the Confederacy or fought against the Union should be excluded, and the state constitution must be amended to exclude Confederate officials and high military officers from voting for or holding the

<sup>7</sup> In the case of the *Venice*, 2 *Wallace*, 278, Chief Justice Chase had described the government's policy as seeking "the reestablishment of the national authority, and the ultimate restoration of states and citizens to their national relations."

<sup>8</sup> *U.S. Statutes at Large*, XIII, Appendix XIV-XVII.

offices of governor or member of the legislature. Slavery must be prohibited and all debts incurred in behalf of the Confederacy must be repudiated.

While this proposal was more mild than those later adopted by Congress, it was too severe for Lincoln, who killed the bill by a pocket veto. Lincoln insisted that he did not "see how any of us can now deny or contradict what we have always said, that Congress has no constitutional power over slavery in the states." However, he issued a proclamation in which he presented the Wade-Davis bill to the people, stating that he would not bind himself to any single plan of reconstruction, and that if any state presented itself for restoration under the Wade-Davis bill, it would have his support. Congress also passed a joint resolution<sup>9</sup> that the electoral votes of the states restored under Lincoln's plan should not be counted. In signing this resolution Lincoln stated that he was not expressing "any opinion on the recitals of the preamble or any judgement of his own upon the subject of the resolution." President and Congress were already clearly at odds. The approaching end of the war deferred the problem of reconstruction, and by the time the question was again taken up, Lincoln's assassination placed Johnson in the Presidency. This destroyed all possibility of friendly agreement between President and Congress.

In principle Johnson was a States' rights Democrat, but his loyalty to the Union and his hatred of slavery had brought him into the Republican party. Johnson's theory of reconstruction, as put forward in his Amnesty Proclamation of May 29, 1865,<sup>10</sup> was in substance identical with that of Lincoln. It rested upon the indestructibility of the states, their continued existence as states during the period of rebellion, the commission of treason and rebellion by combinations of private persons, the right of the President to withdraw the military power and put civil authority into operation when he saw fit, and his authority to recognize the electorates of the seceding states as the constituent bodies of the states under such limitations as he might provide.<sup>11</sup> Johnson did not specify the numerical proportion which the modified electorates should bear to the former ones, as Lincoln did. He excluded from the amnesty privilege, in addition to the classes excluded by Lin-

<sup>9</sup> *U.S. Statutes at Large*, XIII, 567-568.

<sup>10</sup> *Ibid.*, 758-760.

<sup>11</sup> For a statement of Johnson's theory, see his "Washington's Birthday" speech in the *Daily National Intelligencer*, Washington, Feb. 23, 1866.

coln, persons who owned taxable property worth \$20,000 or more. However, the persons excepted might be pardoned by the President. In his proclamation of May 29, 1865,<sup>12</sup> appointing a governor for North Carolina, he extended the suffrage only to those who were eligible to vote before secession and who had received amnesty. Stanton wished to have suffrage extended to all freemen, black and white, but negro suffrage at that time had not been demanded in any vote of Congress. The South accepted Johnson's terms and the remaining seven states proceeded actively toward reconstruction.

Both Lincoln and Johnson expected the exclusion of prominent Southern leaders to be temporary. They would be gradually readmitted to civil rights after the first steps had been taken by men over whom the federal government had more influence. Johnson's first annual message to Congress contained a discussion of the political system of the United States, which he considered to be "an indissoluble union of indestructible states." By attempting secession, the states had suspended, but not destroyed, their functions. The President, through his power to pardon and to withdraw military authority, and to guarantee a republican form of government to every state, had the power to reconstruct the states, or at least to permit the pardoned people of the states to do so. At first Johnson's reconstruction policy was popular. The people in the South believed that restoration was complete and took up the work of adjusting their relations to the freedmen. The people in the North wanted peace, and business interests desired to restore the prosperity of the South so that it might be able to purchase their goods. Many conventions indorsed the work of the President, who had high hopes of founding a new and moderate Republican party.

The radicals, however, were alarmed. They believed that the new "Black Codes" were reducing the negroes to virtual slavery;<sup>13</sup> and began to insist upon Northern supervision of reconstruction in the South, and later upon negro suffrage. Led by Stevens, the House voted to exclude the representatives from the newly reconstructed states, showing by this action that the policy of presidential reconstruction was opposed by Congress. A joint committee of the Senate and the House proceeded to consider a new plan of

<sup>12</sup> *U.S. Statutes at Large*, XIII, 760-761.

<sup>13</sup> For examples of Southern laws restricting the freedmen, see E. McPherson, *Political Manual for 1866*.

reconstruction,<sup>14</sup> and new theories came into prominence. The work of Lincoln and Johnson was undone. In the House, Garfield said: "We must remove the rubbish and rebuild from the bottom." Congress asserted that reconstruction could not be effected by the executive department. Congress alone could decide when it would admit representatives from the states that had seceded; Congress alone had the authority to reëstablish the state system on territory of the United States under the exclusive power of the federal government. During the war, Congress had yielded to President Lincoln, and government by proclamation had encroached upon government by legislation. With the return of peace, Congress was determined to assert its constitutional prerogatives, especially under President Johnson, the "President by accident," who was viewed by Northern Republicans as a renegade Tennessee Democrat.

The debate on reconstruction in the House was opened by Stevens on December 18, 1865. He held that the Constitution had ceased to be applicable to the seceded states and that the observation of its provisions with respect to them was unnecessary. In fact, Stevens felt little bound by constitutional restrictions. He opposed the blind worship of the Constitution, and chose to be guided by the needs of the situation rather than to be hampered by legal doctrines. He stated anew his doctrine that the territory once included in the states that had seceded from the Union was now a conquered district whose fate depended upon the conqueror. If states should be created there again they must be readmitted by Congress as new states. This theory admitted that secession had been temporarily successful. As Stevens said: "Unless the law of nations is a dead letter, the late war between the two acknowledged belligerents severed their original contracts, and broke all the ties that bound them together." It denied the theory of the President that the states had never left the Union. The fact that the Democrats in Congress supported the presidential theory made it difficult for that theory to make headway among the Republicans. The majority of the Republicans were, however, unwilling to accept the extreme view of Stevens that secession had been successful and that the Confederacy had existed as a foreign power. They desired a principle of reconstruction which, while denying the validity of

<sup>14</sup> The joint committee was appointed "to inquire into the condition of the states which formed the so-called Confederate States of America, and report whether they or any of them are entitled to be represented in either House of Congress." For its report see *House Reports*, 39th Congress, 1st sess., II, No. 30, XVIII-XXI.

secession, still left the states that attempted it as something less than states, requiring the consent of Congress to the resumption of their former position.

The theory on which the Republicans could take their stand was worked out mainly in the House by Shellabarger of Ohio, and was developed in the Senate by Sumner and Fessenden.<sup>15</sup> It stated that while secession was invalid from the beginning, and could not take the territory or the people of the states that attempted it from the Union, or from the jurisdiction of the federal government and the Constitution, it did accomplish the loss of their position as states in the Union. They were left as territories, subject exclusively to the jurisdiction of the federal government, a status from which they could be made into states under the Constitution only by the action of Congress in coöperation with the loyal inhabitants of such territory.<sup>16</sup> The majority report of the joint congressional committee stated the theory as follows: "The Constitution, it will be observed, does not act upon the states, as such, but upon the people; while, therefore, the people cannot escape its authority, the states may, through the act of their people, cease to exist in an organized form, and thus dissolve their political relations with the United States."

With the acceptance of this general principle by the Republican party, the question remained as to what conditions Congress would impose upon the South before it readmitted the states. This was determined by the attitude of opposition on the part of the President, by the attitude of the South in resisting the bestowal of large civil liberties upon the freedmen and the readjustment of the basis of political representation, and in sending to Congress men who were obnoxious to the loyal point of view. Political motives also played a considerable part, an effort being made to secure governments in the South favorable to the Republican party. The party that saved the Union must rule it, was the Republican argument. As Godkin said, reconstruction was "the work of sentimentalists controlled by knaves." "The nobler motives were generally utopian and visionary, while the baser ones were practical and decisive."<sup>17</sup>

<sup>15</sup> The "state suicide" theory was also supported by Brownson. He said: "A state under the American system is not in the domain and population fixed to it, nor yet in its exterior organization, but solely in the political powers, rights, and franchises which it holds from the United States. Nothing hinders a state from committing suicide if she chooses." *The American Republic* (1866), p. 290.

<sup>16</sup> J. W. Burgess states that "this was sound political science and correct constitutional law." See his *Reconstruction and the Constitution* (1902), p. 60.

<sup>17</sup> D. S. Muzzey, *The United States of America*, II, 1.

As time went on, Congress adopted a more and more radical policy, established the Freedmen's Bureau, passed Civil Rights' bills, forced through the adoption of the Fourteenth and Fifteenth Amendments,<sup>18</sup> and for a time governed the South, in spite of the President's veto, under military authority and under martial law.<sup>19</sup> In order to limit the powers of the President, Congress attempted to take from him the military powers<sup>20</sup> conferred upon him by the Constitution, and to limit his control over the civil service by the Tenure of Office bill,<sup>21</sup> which made the removal of all officers appointed by and with the consent of the Senate, except only members of the President's Cabinet, subject to the consent of the Senate. Cabinet officers should remain in office during the term of the President who named them and for one month thereafter. This was intended to insure the retention of Secretary of War Stanton, who was in sympathy with the congressional policy of reconstruction, and who was in charge of the military districts in the South.

While the Constitution did not specifically grant to the President the power to dismiss appointive officials, the clause which made him responsible for the execution of the laws was interpreted from the time of the first Congress<sup>22</sup> as necessitating such power. Madison asserted that the President must possess that power in order to secure the obedience of his subordinates, and that the framers of the Constitution so intended it. It had also been the practice of the government from the beginning, although Hamilton had expressed the opinion that "the consent of that body [the Senate] would be necessary to displace as well as to appoint,"<sup>23</sup> and when the Whigs were opposing President Jackson, Webster had stated that dismissal from office should be effected in the same manner as appointment, that is, with the consent of the Senate. Congress suspected that the President was using his power of removal to secure officials in sympathy with his policy of reconstruction, and was determined to maintain its supremacy in the contest with the executive. Johnson vetoed both the Reconstruction bill and the Tenure of Office bill, showing clearly that Congress had no power to establish martial law except when war or armed rebellion

<sup>18</sup> See below, Sec. 2.

<sup>19</sup> See the First Reconstruction Act (1867), *U.S. Statutes at Large*, XIV, 428-429.

<sup>20</sup> *U.S. Statutes at Large*, XIV, 486-487.

<sup>21</sup> *Ibid.*, 430-432.

<sup>22</sup> Story, *Commentaries on the Constitution* (5th ed.), Sec. 1542.

<sup>23</sup> *The Federalist*, No. 77.



existed,<sup>24</sup> and that Congress had no right to force the President to retain subordinates against his judgment.

In spite of repeated Presidential vetoes and of attempts on the part of the South to prevent the execution of the Congressional policy, additional Reconstruction Acts<sup>25</sup> were passed by Congress, increasing the severity of its policy. The reconstructed governments of the Southern states were swept aside and the country was divided into military districts under the command of military chiefs. Under their direction conventions were summoned for which negroes were to be allowed to vote, but the whites disqualified by the Fourteenth Amendment were to be excluded. Not until these conventions framed new constitutions providing for negro suffrage, until these constitutions were ratified in the states and accepted by Congress, until the legislatures elected under them ratified the Fourteenth Amendment, and that amendment received the consent of three-fourths of the states, could the Southern states be readmitted and send representatives to Congress. Later acts gave the generals control over registration and the power to remove civil officers within their areas of command.

Moderate men, who opposed the plans of the radicals, turned to the Supreme Court in an effort to check the excesses of the Congressional policy. They feared the increase of military authority and the encroachments upon civil liberty. In several decisions the court took a conservative attitude in the early period of reconstruction. It held <sup>26</sup> that neither President nor Congress could declare martial law or try civilians by military tribunals where the civil courts were available. It set aside, as *ex post facto* laws,<sup>27</sup> a state act which forbade licenses in various professions to be issued to former Confederates, and a state act which forbade Confederates to practise law in the federal courts. As Congressional reconstruction proceeded, the court took a more timid attitude,<sup>28</sup> and tried to avoid any part in the fierce controversy between

<sup>24</sup> The Supreme Court had upheld Johnson's contention denying the right of Congress to reconstruct the South under military law. See *Ex parte Milligan*, 4 Wallace, 2 (1866). The Tenure of Office Act was repealed partly in 1869 and finally in 1887. The Supreme Court has never passed on the validity of such legislation; and the right of the President to remove officials rests upon custom, the right of Congress to control this power being still in doubt.

<sup>25</sup> *U.S. Statutes at Large*, XV, 2-4; 14-16; 41.

<sup>26</sup> *Ex parte Milligan*, 4 Wallace, 2 (1866).

<sup>27</sup> *Cummings v. Missouri*, 4 Wallace, 277 (1866); *Ex parte Garland*, 4 Wallace, 333 (1866).

<sup>28</sup> See *Mississippi v. Johnson*, 4 Wallace, 475 (1866); *Georgia v. Stanton*, 6 Wallace, 50 (1867); *Ex parte McCardle*, 7 Wallace, 506 (1868).

executive and Congress. It avoided jurisdiction and gave notice that it was not inclined to interfere with the plans of Congress. This destroyed the last hope of the moderates that the rigorous Congressional policy might be checked. Stevens was supreme in Congress, and the military government in the South proceeded with a firm policy of repression.

The governments set up under this policy were travesties on republican institutions. Northern "carpetbaggers" held many important offices; ignorant negroes held many others. An orgy of extravagance and fraud burdened the states with heavy debts and further reduced the recuperative power of the South, already exhausted by the war.<sup>29</sup> Such governments could be maintained only by force, and federal troops were stationed in many places to put down resistance. It is little wonder that the South has remained solidly Democratic to this day. Considerable difference of opinion existed as to the attitude of the South. Carl Schurz, who was sent by President Johnson to report on conditions in the lower South, stated<sup>30</sup> that there was "an utter absence of national feeling" in that section, and that its submission to the reconstruction program sprang from "necessity and calculation." General Grant, sent on a similar mission, reported: "The mass of thinking men in the South accept the present situation in good faith. . . . The citizens of the Southern states are anxious to return to self-government within the Union as soon as possible."

The policy of Congressional reconstruction was constitutionally inconsistent. The Republican North waged the war on the theory that secession was illegal and impossible, yet proceeded to treat the rebellious states practically as though they had seceded. The people of a state could not secede, but the "state" might do so. The Southern states were recognized as states for the purpose of ratifying the Fourteenth Amendment at the same time that Congress was prescribing conditions for their readmission as states.

<sup>29</sup> Numerous books were published on the conditions in the South after the war. Among these were Andrews, *The South Since the War* (1866); Trowbridge, *The South* (1866); Pike, *The Prostrate South* (1874); King, *The Great South* (1875); Reid, *After the War* (1866); Nordhoff, *The Cotton States in 1875* (1876); Somers, *The Southern States Since the War* (1871); and Herbert, ed., *Why the Solid South?* (1890). See also the weekly letters written by E. L. Godkin to *The Nation* during 1865 and 1866. In fiction excellent pictures of conditions appeared in Tourgee, *A Fool's Errand, by One of the Fools* (1880); Morgan, *Yazoo, or the Picket Line of Freedom* (1884); and Page, *Red Rock* (1898).

<sup>30</sup> The Schurz and Grant Reports are in *Senate Executive Docs.*, 39th Congress, 1st sess., No. 2. See also the Truman Report in *Senate Executive Docs.*, 39th Congress, 1st sess., No. 39.

Besides, the Southern states were required to grant suffrage to the negroes, and at the same time ratify the Fourteenth Amendment, which left the granting of negro suffrage optional with the states. Logical consistency had little weight with the radical leaders of Congress, intent upon punishing the South, winning their contest with the executive, and retaining the supremacy of their party. Modern opinion tends to be more favorable in its attitude to President Johnson and to the wisdom of his policy than was the case when the passions of the war were more violent. J. F. Rhodes says <sup>31</sup> that if Johnson's plan "had been sanctioned by the Republican majority in Congress it would undoubtedly have worked out pretty well the problem of reconstruction." John Sherman states: <sup>32</sup> "After this long lapse of time I am convinced that Mr. Johnson's scheme of reorganization was wise and judicious. It was unfortunate that it had not the sanction of Congress and that events soon brought the President and Congress into hostilities." J. W. Burgess calls the Reconstruction Act of Congress the "most brutal proposition ever introduced into the Congress of the United States by a responsible committee."<sup>33</sup>

A modern historian says: "With all due allowance for the defiant attitude of many Southern leaders and for the laudable purpose of the Northern statesmen to protect the negro in his civil rights, there can still be no justification for the vindictive legislation which committed the destinies of the Southern communities to interlopers and former slaves. It defeated whatever chance there was for the reconstruction of the South by the competent native element, and drove the moderates into the arms of the irreconcilables; it deprived the negro of the sympathy of the only class that could be of eventual help to him—his white neighbors; it delayed for a decade the single-minded devotion of the South to the pressing problems of economic rehabilitation; and it deferred for a generation the reconciliation of the sections."<sup>34</sup> W. A. Dunning called the process of reconstruction "a huge social and political revolution under the forms of law."<sup>35</sup> He held that the alternatives were to permit the Southern whites, through the Democratic party, to solve their own problems, to maintain Northern and Republican control through military government, and to maintain Northern and Re-

<sup>31</sup> *History of the United States from the Compromise of 1850*, V, 548.

<sup>32</sup> *Recollections of Forty Years* (1895), I, 361.

<sup>33</sup> *Reconstruction and the Constitution* (1902), p. 114.

<sup>34</sup> D. S. Muzzey, *The United States of America*, II, 17.

<sup>35</sup> *Essays on the Civil War and Reconstruction* (1904), p. 250.

publican control through negro suffrage. The unwillingness of Congress to adopt the first method, and the dislike of the people for the second, led to the adoption of the third.

The final act in the contest between President and Congress was the attempt of Johnson's enemies to force him from office by impeachment, which they considered a "political necessity." Every clue that might lead to a basis for charges of "treason, bribery, or other high crimes and misdemeanors" was eagerly followed. The Judiciary Committee of the House was constantly at work trying to find evidence that would support impeachment, and several times made unsuccessful efforts to start proceedings. Finally, when Johnson asked Secretary of War Stanton, who was in thorough sympathy with the radicals in Congress, to resign, the House voted to impeach the President. The charges accused him of obstructing the Congressional process of reconstruction, of declaring laws of Congress unconstitutional, of bringing contempt upon Congress by violent speeches, and of violating the Tenure of Office Act. On the last charge, Johnson's counsel was able to show that the purpose of the President in dismissing Stanton was to test the constitutionality of the Tenure of Office Act; and that the Act did not apply to Stanton, as he had been appointed by Lincoln, and the Act protected Cabinet officers "during the term of the President by whom they had been appointed." The impeachment, however, was a political act, and arguments of legality had little weight with the implacable enemies of the President. The Senate failed by a single vote to give the necessary two-thirds majority for conviction, and the country was fortunately saved from the precedent of using the impeachment process as a political method of removing the President.<sup>36</sup> As Senator Lyman Trumbull said: "Once set the example of impeaching the President for what, when the excitement of the hour shall have subsided, will be regarded as insufficient causes, and no future President will be safe." The verdict of the Senate marked a return to normal conditions. The opinion of the country was growing more unfavorable to the policy of the radicals, and moderate Republicans realized that the party was being injured by its uncompromising attitude toward the South and by its persecution of President Johnson. The attempt to establish Congressional supremacy over the President failed, and the executive began again to gain in comparison with the legislative power.

<sup>36</sup> The impeachment of Justice Chase in 1805 had been an earlier attempt to use the impeachment process as a method of political vengeance.

## 2. CIVIL WAR AMENDMENTS

The first half of the nineteenth century saw vigorous constitution making and revision in the states; but for more than fifty years no amendment had been added to the federal Constitution. In fact, reverence for the Constitution had reached the point where any attempt at formal change was looked upon with disfavor. Although upwards of 400 proposals for constitutional amendment were made in Congress during this period, none had been successful. As a result of the Civil War, however, three amendments were adopted for the purpose of defining and protecting the status of the former slaves. Early in the war extreme Republicans had urged that measures be taken to destroy slavery. Many persons in the free states, and the majority in the border states, opposed this policy. Lincoln wished to base the war solely on the preservation of the Union; Congress in 1861 voted almost unanimously that the North did not intend to interfere with slavery. The policy of the administration was to abolish slavery gradually, with compensation to the owners, in all the slave states loyal to the Union.

Two confiscation acts were passed by Congress, partly to secure revenue and partly to punish the Confederacy. The first<sup>37</sup> authorized the confiscation of property used in aid of the Confederacy, and the liberation of slaves employed by the Confederacy in war-like labor. The second<sup>38</sup> decreed that the slaves of all who supported the Southern cause should be free. These acts were enforced sparingly, partly because Lincoln doubted their constitutionality and opposed severe measures, but mainly because there was no way to enforce them in the seceded states. Radical abolitionists attacked Lincoln's moderate policy severely.<sup>39</sup> Lincoln replied: "My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that." Slavery was abolished by laws of Congress in 1862 in the District of Columbia<sup>40</sup>

<sup>37</sup> *U.S. Statutes at Large*, XII, 319.

<sup>38</sup> *Ibid.*, 589-592. See *Congressional Globe*, 37th Congress, 2d sess.

<sup>39</sup> See Horace Greeley's "The Prayer of Twenty Millions," in the *New York Tribune*, Aug. 20, 1862, and Lincoln's letter in reply, published in the same paper.

<sup>40</sup> *U.S. Statutes at Large*, XII, 376-378.

and in the territories.<sup>41</sup> Finally convinced that nothing could be accomplished through emancipation with compensation, Lincoln proposed a proclamation of emancipation to apply to the seceded states, justifying this action as a military necessity. Seward suggested that the proclamation should wait until the North had won a victory, otherwise it would be taken as a confession of weakness for the government to "stretch forth its hands to Ethiopia." When Lee's invasion of Maryland was checked, Lincoln, on September 23, 1862, declared that the slaves would be declared free in all states resisting the Union on January 11, 1863. Compensation was again mentioned for the slaves in the loyal states. On January 1 a final proclamation<sup>42</sup> declared slavery abolished by military authority in all the South except Tennessee and the parts of Louisiana and Virginia then held by the Union armies. The border slave states were not affected. The proclamation silenced the clamor of the radicals in the North, and strengthened the cause of the Union in Europe, by making the abolition of slavery one of the purposes of the war. In the South the proclamation was bitterly attacked as an effort to incite slave insurrections; and the provision that free negroes would be received into the military and naval service of the United States was denounced as an immoral arraying of a barbarous against a civilized race. Jefferson Davis, in a message to the Confederate Congress, replied scornfully: "Our own detestation of those who have attempted the most execrable act recorded in the history of guilty man is tempered by profound contempt for the impotent rage which it discloses."

The proclamation had no basis in constitutional law,<sup>43</sup> but was issued by Lincoln under his war powers as commander-in-chief of the army and navy. Moreover, it abolished slavery in only half of the territory where it existed, and did not prevent its future reestablishment by a state. Difficulties in dealing with the slavery question convinced Republican leaders that abolition must be accomplished by constitutional amendment. Military measures would cease to have force on the conclusion of peace, and it was evident that few of the states would abolish slavery by their own acts. In

<sup>41</sup> *U.S. Statutes at Large*, XII, 432.

<sup>42</sup> *Ibid.*, 1268-1269.

<sup>43</sup> A resolution of the House declared that the proclamation "is warranted by the Constitution," and that the policy of emancipation "was well chosen as a war measure, and is an exercise of power with proper regard for the rights of the states and the perpetuity of free government." The vote on this resolution was 78 to 51.



1864 an amendment to abolish slavery was introduced in the Senate. When first proposed it read: "Slavery or involuntary servitude, except as a punishment for crime, shall not exist in the United States." When it came back from the Judiciary Committee, the provision was added that slavery should not exist "in the United States or any place subject to their jurisdiction." This language corresponds almost exactly with the wording of the Ordinance of 1787, which the committee had in mind. They feared that the phrase "United States" might be interpreted to mean only that part composed of the states, and they preferred to make it clear that the prohibition against slavery extended to all territory under the sovereign jurisdiction of the United States. It made slavery illegal against both federal and state action.

When passed by the required two-thirds majority in the Senate, the proposed amendment was sent to the President and signed by him. Whereupon the Senate declared that to ask the President to sign a proposed amendment was without precedent in the practice of the government.<sup>44</sup> Finally a concurrent resolution was passed by both Houses authorizing the President to submit the proposed amendment to the states for ratification. It was sent to the state legislatures and was finally ratified and became a part of the organic law of the land on December 18, 1865.<sup>45</sup> Before that date, slavery was abolished by state amendment in Arkansas, Louisiana, Maryland, Tennessee, and Missouri.

The status of the negro under freedom needed further defining, and the Southern states modified their "black codes," giving the negroes certain legal rights, but retaining important restrictions upon their freedom, and enlarging the field of crimes for which they might be held liable. To the South these restrictions seemed necessary for the purpose of bringing into orderly relations a mass of crude and disorganized people. Outside the South there was a widespread feeling that the new legislation imposed a condition of semi-slavery upon the former slaves. Congress, in 1865, created a Freedmen's Bureau, for the purpose of giving aid and advice to the negroes, and for the purpose of settling disputes between blacks and whites. The negroes had great expectations in

<sup>44</sup> On the right of the President to sign or veto amendments proposed by Congress, see decisions of the Supreme Court in *Hollingsworth v. Virginia*, 3 *Dallas*, 378-381 (1798); *Hawke v. Smith*, 253 *U.S.*, 221, 229 (1920).

<sup>45</sup> On the scope of the 13th Amendment, see the *Slaughter House Cases*, 16 *Wallace*, 36 (1872); the *Civil Rights Cases*, 109 *U.S.*, 3 (1883); the *Selective Draft Cases*, 245 *U.S.*, 366, 390 (1918).

their new status, and were disappointed at the delayed distribution of land. The Southern whites believed that zealous Northerners who had come to the South to uplift the negro, or who were using him to further their own political ambitions, were disorganizing conditions further. Hot debates in Congress and violent language on both sides increased the discontent. Moderate men on both sides wished for peace and were willing to let the two races in the South settle their own problems and make reforms gradually. President Johnson's first annual message stated that "it may prove that the negroes will receive the kindest usage from some of those on whom they have hitherto most closely depended."

Radical anti-slavery men were alarmed at this policy; and Congress, under the leadership of Thaddeus Stevens, determined to prevent the new legislation of the South and to oppose the moderate policy of the President by a more stringent program. In 1866 the Freedman's Bureau bill, passed by both houses, enlarged the powers of the Bureau and provided that when a state by its laws discriminated against the blacks, the President should extend military law over that state. When the bill was vetoed by Johnson, he was bitterly attacked in Congress and out, and was declared to be a Democrat and a Southern sympathizer. Johnson, in turn, accused Stevens, Sumner, and Wendell Phillips of trying to destroy the principles of the government. Congress then passed a Civil Rights bill,<sup>46</sup> declaring all persons born in the United States, except Indians not taxed and foreign subjects, to be citizens of the United States, and guaranteeing equal rights to such citizens. When Johnson vetoed the bill, Congress passed it over his veto. The Freedmen's Bureau bill was also revived and passed over the President's veto. Johnson opposed concentration and stood for the right of the states to settle their own problems. Congress was unwilling to surrender the situation to state control.

The debate on these bills was bitter, and much was said about outrages in the South. Reports of acts of violence were exaggerated and were exploited in the Northern press for political effect. The belief was widespread that the South was still rebellious and that it should not be permitted to control the rights and liberties of the former slaves. Accordingly, the radicals proposed the Fourteenth Amendment to the Constitution, for the purpose of giving constitutional vigor to the Civil Rights bill. It provided that every person born or naturalized in this country was a citizen of the

<sup>46</sup> *U.S. Statutes at Large*, XIV, 27-29.

United States and of the state in which he lived, and forbade any state to deprive him of the privileges of that citizenship. It reduced the representation in Congress of any state that should deprive the negro of suffrage. It provided that no state should "deprive any person of life, liberty, or property without due process of law," or deny the equal protection of the laws. It excluded from federal or state office, until pardoned by Congress, persons who, having held high federal or state office, later supported the Confederacy. It guaranteed the payment of the federal war debt, but ordered that no state should pay the Confederate debt or pay for the loss of slaves through emancipation. By "Reconstruction Acts," which placed the governments of the Southern states largely in the hands of negroes and Northern carpetbaggers, the amendment was finally ratified and became a part of the Constitution on January 1, 1869.

This amendment changed the status of citizenship in the United States. The Constitution had clearly recognized a dual citizenship, that of a particular state, and that of the United States.<sup>47</sup> It was generally held before the Fourteenth Amendment that United States citizenship, except in cases of naturalization, was derived from state citizenship. Calhoun held that federal citizenship was subordinate to and derivative from state citizenship.<sup>48</sup> In the Dred Scott case, Chief Justice Taney said that "every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body; but none other."<sup>49</sup> In the same case, Justice Curtis admitted that "those persons born within the several States, who by force of their several constitutions and laws, are citizens of the States, are thereby citizens of the United States."<sup>50</sup> Justice Story said: "Every citizen of a state is *ipso facto* a citizen of the United States."<sup>51</sup> Rawle in his early work said: "The citizens of each State constituted the citizens of the United States when the Constitution was adopted."<sup>52</sup> In the debate in Congress on the Fourteenth Amendment, Mr. Johnson stated that "the decisions of the courts, and the doctrine of the commentators is that every man who is a citizen of a state becomes *ipso*

<sup>47</sup> State citizenship was recognized in Art. IV, Sec. 2, Par. 1, and in Art. III, Sec. 2. United States citizenship was recognized in Art. I, Secs. 2, 3, and in Art. II, Sec. 1.

<sup>48</sup> *Works*, II, 242.

<sup>49</sup> 19 *Howard*, 393, 406.

<sup>50</sup> *Ibid.*, p. 582.

<sup>51</sup> *Story on the Constitution*, Sec. 1693.

<sup>52</sup> *Rawle on the Constitution*, p. 86.

*facto* a citizen of the United States; but there is no definition as to how citizenship can exist in the United States except through the medium of citizenship in a state."

Since the adoption of the Fourteenth Amendment, there is no doubt that state citizenship is now derived from United States citizenship. Chief Justice White, writing for a unanimous court, declared in 1918 that the Fourteenth Amendment has "completely broadened the national scope of the government under the Constitution by causing citizenship of the United States to be paramount and dominant, instead of being subordinate and derivative."<sup>53</sup> While every citizen of the United States resident in any state is now a citizen of that state, it is perfectly possible for a person to be a citizen of the United States and not a citizen of any state, as when he resides in one of the territories, or is born abroad of an American father and continues to reside abroad, or when an American citizen takes up his residence abroad. In such case he would lose his state citizenship, but retain his citizenship in the United States.<sup>54</sup>

The provision of the Fourteenth Amendment that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" was intended to place upon the states restrictions which had already been imposed upon the federal government.<sup>55</sup> Its main purpose was to protect the freed negroes against discrimination in state statutes. In its later applications it was extended far beyond the original intention, and led to bitter controversies between the "police powers" of the states and the protection guaranteed to the liberty and property of individuals and corporations by the "due process" clause. Representative Bingham, who wrote the "due process" clause, stated that he wished to redress a legal defect in the Constitution by enabling the Supreme Court to protect the property of all persons. Roscoe Conkling asserted later that the clause was intended to "curb the many who would do to the few as they would not have the few do to them." In this spirit Republican lawyers restored to the Constitution the protection of property which Jacksonian judges had gradually whittled away. Only a few farsighted politicians realized at the

<sup>53</sup> Selective Draft Cases, 245 U.S., 366, 369. See G. E. Sherman, "Emancipation and Citizenship," in 15 *Yale Law Journal*, 263.

<sup>54</sup> *Hammerstein v. Lyne*, 200 Fed., 165 (1912).

<sup>55</sup> In the Fifth Amendment.

time the fundamental change in federal powers created by this amendment.

The rejection of the Fourteenth Amendment by the states reconstructed under Johnson's plan did more than anything else to convince the people of the North that reconstruction must be undertaken by Congress, and that a new electorate created by Congress must be established in those states. Realizing how necessary the negro vote was for the perpetuation of their power, the radical Republicans in Congress proceeded in 1869 to pass a Fifteenth Amendment, forbidding the United States or any state to deny the right of voting to any citizen on account of "race, color, or previous condition of servitude." This amendment, ratified in 1870, marked the culmination of the Congressional policy of reconstruction. It satisfied the theorists who had long contended for negro suffrage as a matter of "principle," the believers in vengeance who wished to punish the South for secession, and the politicians who wished to secure the support of the negro vote.

Since the states, by this amendment, were forbidden to interfere with the political status of the negro, voluntary associations of whites in the South, such as the White Leagues, Knights of the White Camelia, Councils of Safety, and especially the Ku Klux Klan,<sup>56</sup> took upon themselves the duty of maintaining the supremacy of the white race. On the other hand, through the efforts of carpetbaggers and "scalawags," and through the organization of Union Leagues in the South, the negroes were drawn more actively into politics. As white control was increasingly restored, Congress passed a series of acts intended to prevent the actions of groups in the South that interfered with the carrying out of the Fourteenth and Fifteenth Amendments. An Enforcement Act<sup>57</sup> in 1870 imposed severe penalties for infraction of the amendments. A second Enforcement Act<sup>58</sup> in 1871 placed Congressional elections under the control of supervisors appointed by federal judges. When President Grant in his message recommended "such legislation as, in the judgment of Congress, shall effectually secure life, liberty, and property and the enforcement of law in all parts of the United States," Congress passed the Ku-Klux Act,<sup>59</sup> which gave the Presi-

<sup>56</sup> J. C. Lester and D. L. Wilson, *Ku Klux Klan, Its Origin, Growth, and Disbandment* (1905).

<sup>57</sup> *U.S. Statutes at Large*, XVI, 140-146.

<sup>58</sup> *Ibid.*, 433-440.

<sup>59</sup> *Ibid.*, XVII, 13-15. The "Ku-Klux" report is in *House Report 22*, 42nd Congress, 2nd sess.

dent authority to suspend the writ of Habeas Corpus and power to prevent Ku-Klux outrages.

The increasing severity of these laws not only aroused the opposition of Democrats, who believed in strict construction of the Constitution, but also led to much opposition among moderate Republicans, who considered them an unconstitutional interference with the police powers of the states. They enormously strengthened the solidarity of the Democratic party in the South. The country in general wished to remove the negro question from politics, to restore home rule in the South, and to create a more conciliatory attitude between the negroes and their former masters. The "thorough" policy of Congress met increasing opposition from its own members<sup>60</sup> and from influential sources in all parts of the country. The Amnesty Act of 1872, removing most of the political disabilities imposed by the Fourteenth Amendment, marked the beginning of a period of reconciliation.<sup>61</sup>

At the close of the war the Supreme Court hesitated to decide whether Congress or the states had the right to supervise reconstruction,<sup>62</sup> largely because it did not wish to interfere in the contest between the legislature and the executive. The reconstruction policy of Congress was carried out with but little regard for the judicial branch of the government, which, since the Dred Scott decision, had been an object of suspicion in the North as a "bulwark of slavery." As late as 1868 a radical paper stated that "this Congress will brook no opposition from the Court on political matters, and if the Court interferes, the Court will go to the wall."<sup>63</sup> After the adoption of the Civil War amendments, the court could no longer hesitate to give its views. The reconstruction era was a period of centralization, opposition to the doctrine of states' rights was keen, and the national authority was widely extended over the rights and immunities of the negroes. In spite of the fact that, in the reorganization of the court after the secession of the Southern states, Lincoln appointed five new justices, and that only one Southerner remained on the bench at the close

<sup>60</sup> Note the speeches of Schurz and others in opposition to the Ku-Klux bill. See *House and Senate Journals*, 42nd Congress, 1st sess., and the *Congressional Globe*.

<sup>61</sup> Note the famous speech of Lamar of Mississippi in the House (1874) eulogizing Sumner and expressing a lofty desire for a united country.

<sup>62</sup> See *Mississippi v. Johnson*, 4 *Wallace*, 475 (1866); *Georgia v. Stanton*, 6 *Wallace*, 50 (1867); *Ex parte McCordle*, 7 *Wallace*, 506 (1868).

<sup>63</sup> C. Warren, *Supreme Court in American History* (1922), III, Chs. XXIX-XXX.



of the Civil War, the court was little inclined to radicalism, and did not favor the policy of unchecked centralization. The Supreme Court expressed its purpose to hold "with a steady and an even hand the balance between state and federal power." It approved the necessity of preserving the states "with powers for domestic and local government, including the regulation of civil rights, the rights of person and property." In a series of decisions<sup>64</sup> the court gave restricted application to these amendments and to the laws passed under them and saved large areas of state autonomy. It held that the amendments did not give to Congress the right to create a code of law for the regulation of private rights, nor were they directed against the actions of individuals, but only against action by the states or the United States. The main provisions of the Enforcement Acts, the Ku-Klux Act, and the Civil Rights bill of 1875,<sup>65</sup> which made it a misdemeanor for proprietors of inns, public conveyances, theaters and other places of amusement to exclude persons on account of race, color, or previous condition of servitude, were declared unconstitutional.

### 3. THEORY OF THE UNION AFTER THE CIVIL WAR

After the Civil War the two great questions of whether the Union could endure and whether slavery should survive, which had occupied the attention of political thinkers for a half-century, were no longer of importance. The union of slavery and secession had hastened the downfall of both. The tendency of the times, in all parts of the world, was toward nationalism and the abolition of slavery. The powerful forces of national union and the worldwide sentiment against human slavery destroyed the particularistic doctrine of States' rights and secession, and wiped out slavery in all parts of the American Union. After the Civil War there might be disputes as to the exact division of powers between the national government and the states, but there was no doubt that the United States was a nation and not a confederation. The latent strength of national spirit in America was decisively manifested and the nature of the Union was settled beyond question.

The nationalist theory began to take on a new form, less strictly legal and constitutional. In the earlier period the argu-

<sup>64</sup> The Slaughter House Cases, 16 *Wallace*, 36 (1872); *U.S. v. Cruikshank*, 92 *U.S.*, 542 (1875); *Virginia v. Rives*, 100 *U.S.*, 313 (1879); Civil Rights Cases, 109 *U.S.*, 3 (1883).

<sup>65</sup> *U.S. Statutes at Large*, XVIII, 335-337.

ments of Marshall and Webster were based upon a close analysis of the text of the Constitution and upon a legal interpretation of specific phrases. "We, the people of the United States," "the supreme law of the land," and similar statements were relied upon to prove the national character of the Union. The Constitution was looked upon with reverence as a set of fixed principles which might be interpreted, but which must not be changed or questioned. Arguments were seldom carried far beyond its boundaries. Lincoln was almost the first to rest his arguments on the broader basis of public morality and of expediency. The war itself did much to change the point of view. The necessities of the conflict compelled a disregard for strictly legal forms and methods, and led to a determination to maintain the Union at any cost. Lincoln stated that "measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution, through the preservation of the Nation."<sup>66</sup> The Constitution must not be allowed to prevent the maintenance of a democratic nation. Sydney Fisher asserted that "if *the* Union and *the* government cannot be saved out of this terrible shock of war constitutionally, *a* Union and *a* government must be saved unconstitutionally."<sup>67</sup>

Writers began to point out that there is an unwritten as well as a written constitution, and that constitutions must live and grow in accordance with the nation's development. J. A. Jameson distinguished between constitutions as "organic growths," which are the product of social and political forces, and constitutions as "instruments of evidence," which express in technical language a particular form of organization.<sup>68</sup> O. A. Brownson distinguished between the constitution of a nation, which rests on "the genius, the character, the habits, customs, and wants of the people," and the constitution of a government, which rests upon a particular legal statement.<sup>69</sup> E. Mulford distinguished between the "historical constitution," which resulted from the nation's historical development, and the "enacted constitution," which was the particular statement of the organization of a given period.<sup>70</sup> J. C. Hurd stated that political facts must yield to the social and political forces that decreed the existence of the nation. If the United States, under

<sup>66</sup> *Works*, II, 508.

<sup>67</sup> *The Trial of the Constitution* (1862).

<sup>68</sup> *Constitutional Conventions* (1866), Sec. 63.

<sup>69</sup> *The American Republic* (1866), Ch. VII.

<sup>70</sup> *The Nation* (1870), Ch. IX. Mulford's work was a peculiar application of Hegelian philosophy to American political problems, expressed in an abstract and metaphysical dialectic.

the Constitution, was not legally a nation, it ought to be one and had actually become one.<sup>71</sup>

These ideas were based upon the firm belief that the nation's existence was more important than any interpretation of a written document. The new doctrine was not based on the contract theory of the eighteenth century. It was more influenced by the philosophy of Lieber,<sup>72</sup> which called attention to the organic elements in the state, and which went back to the spirit of nationality that makes and unmakes constitutions. It represented the historical and evolutionary point of view which examined the political, social, and economic forces that are the spirit of a state, and which believed that the laws of a people should grow out of their peculiar circumstances.

This point of view had been thoroughly worked out in European political thought. It was stated by Montesquieu in his *Spirit of the Laws*, and had been emphasized by writers such as Burke,<sup>73</sup> de Maistre,<sup>74</sup> and von Haller,<sup>75</sup> who had opposed the French Revolution, the social contract theory, and the confidence of that period in the application of human reason to the framing of laws and constitutions. They held that institutions should develop gradually in accordance with natural conditions, and that law should represent accumulated customs and traditions. They expressed great scorn for written constitutions and for the prevalent belief in fundamental and universal principles of governmental organization. The German idealists, Fichte<sup>76</sup> and Hegel,<sup>77</sup> with their mystical belief in the state as an organic expression of the growth of a national spirit or will; the writers of the historical school, such as Savigny,<sup>78</sup> Maine,<sup>79</sup> and Bluntschli,<sup>80</sup> with their view of the state as a product of gradual development, rather than as a contract among individuals; and the organic, evolutionary thinkers, such as Comte,<sup>81</sup>

<sup>71</sup> *The Theory of our National Existence* (1881); *The Union State* (1890).

<sup>72</sup> See above, Chapter IX, Sec. 3.

<sup>73</sup> *Reflections on the Revolution in France* (1790); *Appeal from the New to the Old Whigs* (1791); *Thoughts on French Affairs* (1791).

<sup>74</sup> *Essays on the Natural Laws of the Social Order; Primitive Legislation; and Theory of Political and Religious Power*, in *Works*, Vols. I-IV (2nd ed., 1817).

<sup>75</sup> *Restoration of Political Science* (1816-1834).

<sup>76</sup> *Die Staatslehre* (1813).

<sup>77</sup> *Grundlinien der Philosophie des Rechts* (1821).

<sup>78</sup> *Von Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (1814). *Geschichte des römischen Rechts im Mittelalter* (1815-1831); *System des Heutigen römischen Rechts* (1840-1849).

<sup>79</sup> *Ancient Law* (1861), *Early History of Institutions* (1874), *Early Law and Custom* (1883).

<sup>80</sup> *Lehre vom modernen Staat* (1852-1875).

<sup>81</sup> *Cours de philosophie positive* (1829-1842).

Spencer,<sup>82</sup> and Schäffle<sup>83</sup> with their emphasis on the laws of natural growth, all attacked the doctrine of the state as a deliberate, artificial creation and the belief that political institutions might be made or unmade at will. They viewed the state as the natural outgrowth of the changing social, economic, and moral conditions of the people, and law as the creation of the collective national mind.

This new point of view emphasized more strongly the unity and indivisibility of sovereignty. Sovereignty, said Hurd, is a matter of fact rather than of law. It does not proceed from the Constitution and laws, but is itself the creator of constitutions and laws.<sup>84</sup> Its location in the United States cannot be determined by a study of the Constitution but by an examination of the facts. Such an examination proved the sovereignty of the Union. The states could not be regarded as nations; the United States as a whole possessed the attributes of a nation. In it alone could sovereignty be found. "Back of all the states, and of all forms of government for either the states or the Union, we are to conceive of the nation, a political body, one and indivisible."<sup>85</sup> Mulford, influenced by the transcendental philosophy of the German idealists, declared that supreme power in the United States rested in the nation at large.

Some writers argued that sovereignty rested in the Union, regardless of the states;<sup>86</sup> others admitted a "quasi-sovereignty" in the states, or attributed sovereignty to the states in Union. While denying the sovereignty of the states, they argued the necessity of recognizing the states as integral parts of the Union. Sovereignty was vested in the people as organized in states united. This view was expressed by the Supreme Court when it stated that "without the states in Union, there could be no such political body as the United States."<sup>87</sup> The court adopted the theory of an "indestructible Union composed of indestructible states,"<sup>88</sup> and held to a modified form of the divided sovereignty theory. It denied the legal right of secession, but viewed the people of each commonwealth as composing "a state, having its own government, and endowed with all

<sup>82</sup> *Principles of Sociology* (1876-1896).

<sup>83</sup> *Bau und Leben des socialen Körpers* (1875-1878).

<sup>84</sup> *The Theory of Our National Existence*, p. 97.

<sup>85</sup> J. A. Jameson, *Constitutional Conventions*, Sec. 51.

<sup>86</sup> J. Tiffany, *Treatise on Government and Constitutional Law* (1867); J. N. Pomeroy, *Constitutional Law* (1868). This was also the view of Jameson in the later edition of his *Constitutional Conventions*. In the first edition he spoke of a "quasi-sovereignty" in the states.

<sup>87</sup> *Lane County v. Oregon*, 7 *Wallace*, 76 (1868).

<sup>88</sup> *Texas v. White*, 7 *Wallace*, 700-726 (1868).

the functions essential to separate and independent existence" in the Union.

The new theory of the nation paid little attention to the Revolutionary doctrine of social contract. It emphasized the instinctive forces and the historical development that create a nation, and attributed to it an organic unity, resulting from an evolutionary process.<sup>89</sup> A nation was viewed as a population possessing ethnic unity. The United States, because of its community of race and interests, and because of its definite and isolated geographic position, had become a nation. This fact was more important than the wording of the Constitution, which was created before the historical process that created the nation had done its work. If it became necessary to use force to assert the supremacy of the nation, such use was justifiable. Sovereignty was one and indivisible and belonged to the nation, to the Union as a whole. The theory that the states possessed sovereignty, in any absolute sense, was generally abandoned. Some writers even went so far as to hold that the doctrine of sovereignty had no place in a federal state, or that sovereignty was not essential to any constitutional state.<sup>90</sup>

The new nationalist theory in the United States, and the concepts of nation, sovereignty, and federal state were thoroughly discussed by T. D. Woolsey in the most comprehensive treatise on political science that had thus far appeared in America.<sup>91</sup> Influenced by Lieber, he rejected the doctrine of natural rights and social contract, and held that the origin of the state rested on the facts of historical evolution, and that its existence was justified by the nature and necessities of mankind. He laid emphasis on national unity, on the territorial basis of the state,<sup>92</sup> and on its unified sovereignty. "The state," he said, "must be an existing entity on some part of the earth's surface. If it be really a state, no other body

<sup>89</sup> For an extreme statement of the organic theory, see J. Draper, *Thoughts on the Future Civil Policy of America* (1865).

<sup>90</sup> P. Bliss, *On Sovereignty* (1885). This idea that sovereignty was not essential to state existence, and that the member of a federal union might be a "state" without being "sovereign" was widely held in Germany, where the particularistic spirit was strong. It made it easier for bodies politic, such as Bavaria, to enter the German federation if they could consider themselves "states" after they had entered the union. See G. Meyer, *Staatsrechtliche Erörterungen über die deutsche Reichsverfassung* (1872); P. Laband, *Das Staatsrecht des deutschen Reiches* (1876); G. Jellinek, *Lehre von den Staatenverbindungen* (1882); H. Preuss, *Gemeinde, Staat, Reich* (1889).

<sup>91</sup> *Political Science* (2 vols., 1878). Less important treatises had appeared in the works of G. H. Yeaman, *Study of Government* (1871), and R. J. Wright, *Principia, or Basis of Social Sciences* (1875).

<sup>92</sup> T. D. Woolsey, *Political Science*, I, 207.



having the same properties of a sovereign state can coexist with it within the same bounds, nor exercise any jurisdiction nor do any political act there except by its consent.”<sup>93</sup> “The United States are a state, and nation also.”<sup>94</sup> It is a “State formed by a union without merging the existence of the members in that which they created.”<sup>95</sup> It is held together, not only by the Constitution, but by “all the feelings, strong beyond any one’s estimate, that clustered around the Union in fond loyalty.”<sup>96</sup> If men possess a “community of language, law, and general civilization, similar political views and a similar experience, together with interests that can be reconciled, they can form a close union, which alone after a lapse of time ensures the perpetuity of their political forms.” Viewing the state as a positive good, Woolsey abandoned the earlier individualistic point of view, and was willing to entrust the state with large, though limited, powers. The scope of its activities might extend “as far as the nature and needs of man reach, including intellectual and æsthetic wants of the individual, and the religious and moral nature of its citizens.”<sup>97</sup> Woolsey was bitterly opposed to the new doctrines of communism and socialism.<sup>98</sup> His work drew upon a wealth of learning and contained elaborate historical surveys of earlier political forms, and numerous quotations from the theories of earlier political philosophers. It was widely used as a text in American institutions of learning, and exerted a powerful influence on the political thought of the generation following.<sup>99</sup>

The nationalist theory reached its most complete and scientific statement in the work of John W. Burgess.<sup>100</sup> Like Woolsey, he followed the historical-comparative method of the German publicists;<sup>101</sup> but unlike Woolsey, whose theological training and in-

<sup>93</sup> T. D. Woolsey, *Political Science*, I, 142.

<sup>94</sup> *Ibid.*, II, 251.

<sup>95</sup> *Ibid.*, II, 256.

<sup>96</sup> *Ibid.*, II, 258.

<sup>97</sup> *Ibid.*, I, Ch. IV.

<sup>98</sup> See his *Communism and Socialism* (1880).

<sup>99</sup> Woolsey was influenced largely by the German theory of the state, especially that of Bluntschli. Bluntschli published his *Allgemeines Staatsrecht* in 1852 in one volume. It afterwards grew to two volumes, and when a fifth edition became necessary in 1875 he added the third volume called *Politik*. Woolsey stated in his Preface that the three divisions of his work corresponded to the *Naturrecht*, *Staatslehre*, and *Politik* of the Germans.

<sup>100</sup> *Political Science and Comparative Constitutional Law* (2 vols., 1891). See also his “The American Commonwealth” in *Political Science Quarterly*, Vol. I. The theory of Burgess on the nature of the American Union may also be drawn from his historical works, *The Middle Period* (1897); *The Civil War and the Constitution* (2 vols., 1901), and *Reconstruction and the Constitution* (1902).

<sup>101</sup> His work was dedicated to his teacher, Johann Gustav Droysen.



terests led him to emphasize ethical principles in politics, Burgess was trained as a historian and jurist, and was interested in the problems of comparative public law. His fundamental philosophy was much influenced by Hegel, and his political thought bore striking resemblance to that of Bluntschli. He also rejected the theory of natural rights and of social contract, and held that the state was a natural result of historical and evolutionary development. The social-contract doctrine, he said, assumed "that the idea of a state with all its attributes is consciously present in the minds of individuals proposing to constitute the state, and that the disposition to obey law is universally established."<sup>102</sup> Such a condition is contrary to our knowledge of the historical development of political institutions, and could not exist except at the end of a long period of political experience.

Burgess considered sovereignty, which he defined as "original, absolute, unlimited, universal power over the individual subject and all associations of subjects," as the indispensable mark of statehood. He denied that absolute sovereignty destroys freedom; on the contrary, it is the guaranty and security of individual liberty. Liberty could not exist except under law. The only liberty possible is that found within political society and protected by the state. In the United States ultimate sovereignty is possessed by the people as organized into the American nation. In the Constitution they organized the central government, outlined a sphere of civil liberty, and gave to the commonwealths<sup>103</sup> residuary powers. The "states" were, thus, merely organs of government whose relative importance was bound to decline. A federal government might exist, but a federal state is either a number of sovereign states with their own governments and with a common central government, or one sovereign state having a central government and several local governments. Sovereignty is indivisible and must rest either in the nation as a whole or in the separate states. Burgess agreed with Calhoun as to the indivisibility of sovereignty, but drew the opposite conclusion as to its location in the United States. The Constitution did not make the Union; the Union made the Constitution.

The American system, in which civil liberty was guaranteed in the Constitution and safeguarded by the Supreme Court against the encroachment of the other organs of government, Burgess con-

<sup>102</sup> *Political Science and Comparative Constitutional Law*, I, 162.

<sup>103</sup> Burgess is always careful to refer to the component members of the Union as "commonwealths," not "states."

sidered to be the best reconciliation of government and freedom.<sup>104</sup> He laid much stress on the distinction between state and government, holding that back of the government lies the Constitution, and back of the Constitution, the original sovereign state which creates both government and liberty. Burgess defined the nation as "a population of an ethnic unity inhabiting a geographic unity," and believed that the "national state" represented the highest form of political development. It was "the human organ least likely to do wrong." He believed that the state should aim to attain its natural geographic boundaries and to render its population ethnically homogeneous; and that it was justified in using force, if necessary, to accomplish these ends.

He was also much impressed by the political genius of the Teutonic peoples, and thought that it was the "manifest mission" of the Teutonic nations to establish their political civilization over less competent peoples.<sup>105</sup> The lessons of history and ethnology teach that "in the economy of history the duty has fallen to them of organizing the world politically, and that if true to their mission they must follow the line of this duty as one of their chief policies."<sup>106</sup> The political genius of the Americans would sooner or later compel them to assume their share of the "white man's burden." Burgess took a broad view of the ends of the state. The primary end was to maintain peace and order, and to mark out a sphere of liberty for individuals and associations. This was best accomplished through the organization of national states. The secondary end was to perfect and give expression to the national genius. For this purpose the welfare of the state was more important than that of the individual. These ends must be attempted in historical order: for the ultimate end, which demanded a world organization and a world civilization, the time had not yet come. Any attempt to realize world-order before national-order would lead to anarchy.

Later discussions of sovereignty and of the nature of the American Union appeared in the writings of Woodrow Wilson<sup>107</sup> and

<sup>104</sup> In his later book, *The Reconciliation of Government with Liberty* (1915), he pushed the doctrine of the value of constitutional guaranties of liberty to rather absurd extremes. In his latest book *Recent Changes in American Constitutional Theory* (1923) he viewed with alarm present-day tendencies to break down the distinction between state and government, and to destroy the constitutional restrictions upon governmental authority.

<sup>105</sup> Compare with the doctrines of Treitschke, in his *Die Politik* (2 vols., 1899-1900).

<sup>106</sup> *Political Science and Comparative Constitutional Law*, I, Ch. III.

<sup>107</sup> *An Old Master and Other Political Essays* (1893); *The State* (1898).

W. W. Willoughby.<sup>108</sup> Wilson called attention to the life and spirit of things political and to the actual workings of political forces, and denounced the formal and mechanical in politics. To him sovereignty was an actual and living force, constantly at work, not a legal abstraction. It was the "daily operative power of framing and giving efficacy to laws." Wilson placed more emphasis upon the states in the American Union than most writers of his time, accepting the doctrine of Jellinek that the members of a federal Union were non-sovereign states. "They are still states, because their powers are original and inherent, not derivative; because their political rights are not also legal duties; and because they can apply to their commands the full imperative sanctions of the law." He maintained that the members of the Union were still genuine states, although their "sphere is limited by the presiding and sovereign powers of a state superordinated to them . . . they have dominion; it has sovereignty."<sup>109</sup> The national government and the state governments formed "two parts of one and the same government, two complementary parts of a single system." The states were supreme in the sphere reserved to them. "Although it is true, taking our system as a whole, that the governments of the states are subordinate in our political order to the government of the Union, they are not subordinate in the sense of being subject to be commanded by it, but only in being less than national in their jurisdiction."<sup>110</sup> The prerogatives of the states, he said, would become more essential to our system as the vastly complex organism of the nation expanded.

Willoughby followed the analytical method of the Austinian school of jurisprudence.<sup>111</sup> He viewed the state as a legal personality, expressing its will in the form of law. Rights were the creation of the state and could not exist before the state or outside of political organization. Sovereignty, which was absolute and indivisible, represented the supreme will of the body politic. It was located in "all the organs through which are expressed the volitions of the state." National and state governments, acting in their respective spheres under the Constitution, formed the government of

<sup>108</sup> *The Nature of the State* (1896); *The American Constitutional System* (1904); *Social Justice* (1903); *Constitutional Law of the United States* (1910); *The Fundamental Concepts of Public Law* (1924).

<sup>109</sup> *An Old Master and Other Political Essays*, p. 94.

<sup>110</sup> *The State*, pp. 296-298.

<sup>111</sup> He was also influenced largely by the ethico-political theory of the English philosopher, T. H. Green. See his *Principles of Political Obligation* (1879-1880).

the United States, and sovereignty lay in the sum-total of the law-making bodies. "By whomsoever, or whatsoever body, the will of the state is expressed, and the law created, there we have sovereignty exercised."<sup>112</sup> With the adoption of the Constitution, a new sovereignty came into existence. A sovereign state was born, the result of the "feeling of national unity that first created it a single political body out of a number of sovereign peoples, and then gave to it an objective organization."<sup>113</sup> "From the strictly juristic standpoint, the commonwealths derive their existence from the will of the national state." The creating cause of a state is the existence in a community of a "general will" demanding political unity. Whatever may have been the intention of the framers of the American system, "there soon came into being a national feeling which created a national sovereignty that was objectively realized both in explicit declaration and in fact."<sup>114</sup> "It is therefore plain that the constituent states have no sovereignty of their own, and that such autonomous powers as they now possess are had and exercised by the express will or by the constitutional forbearance of the national sovereignty."<sup>115</sup>

In summing up the theories that have been held regarding the nature of the American Union, it appears that the earliest doctrine was that of divided sovereignty. When the Constitution was created, the American people, influenced by the social contract theory of the period, believed that individuals, in creating a state by common agreement, might exempt certain interests from its sphere of legal control. In the same way, the thirteen states were conceived as creating, by joint agreement, a new system, in which certain legal rights of regulation were exempt from national control and were reserved to the compacting states or to their citizen bodies. The national government was sovereign in its sphere; the states were sovereign in theirs. Ultimate sovereignty lay in "the people."

Difficulties in applying the doctrine of divided sovereignty to concrete controversies, and the disappearance of the social contract theory with the rise of evolutionary and organic concepts of the state, led to the doctrine of unitary, indivisible sovereignty. One group found this sovereignty in the states; the other, in the Union. The middle position was abandoned by both parties when the contest between nationalism and States' rights became acute. The

<sup>112</sup> *The Fundamental Concepts of Public Law*, p. 119.

<sup>113</sup> *The American Constitutional System*, p. 9.

<sup>114</sup> *Ibid.*, p. 33.

<sup>115</sup> *The Fundamental Concepts of Public Law*, p. 250.

States' rights school advanced the theory that the Constitution was a compact to which the original states, acting as separate sovereign political bodies, were the contracting parties; that these states had no intention to create a political entity that would be legally superior to them, or that would destroy or limit their several sovereignties; and that the secession of any state from the Union could not be an illegal act. This doctrine, put forward by Calhoun, was continued through the period of the Civil War by Jefferson Davis, A. H. Stephens, and B. J. Sage; and in much modified form reappeared in the early theory of Woodrow Wilson that the members of the Union were states, though not sovereign.

Those who asserted the legal supremacy of the United States as a single sovereign state have advanced several theories and have put forward varying interpretations of the historical birth of the Union. By some it was declared that the original thirteen states never were separately sovereign, that they won their independence from Great Britain by coöperative and associated action, and that the Union was older than the states. Lincoln asserted that "the states have their status in the Union and they have no other legal status. . . . The Union. and not themselves separately, procured their independence and their liberty. . . . The Union is older than any of the states, and, in fact, it created them as states."<sup>116</sup> Most jurists were agreed, however, that whatever may have been the legal situation prior to 1781, the Articles of Confederation recognized the separate sovereignty of the thirteen states. Even such a stanch nationalist as Chief Justice Marshall admitted this. In *Gibbons v. Ogden*<sup>117</sup> he said: "It has been said that they [the states] were sovereign, were completely independent, and were connected with each other by a league. This is true."

Some writers, who admitted the several sovereignties of the states under the Articles of Confederation, still held to the theory that the thirteen states became independent jointly, and asserted that during the Confederation the states "usurped" the attributes of sovereignty that rightfully belonged to them in union. Von Holst, in speaking of the Articles of Confederation, said that the Continental Congress "exhorted the legislatures, by an act of public usurpation against the legal consequences of historical facts, to transform the Union into a league of states, and the legislatures recklessly responded to this demand."<sup>118</sup> Pomeroy declared that

<sup>116</sup> *Works*, VI, 315.

<sup>117</sup> 9 *Wheaton*, 1.

<sup>118</sup> *Constitutional Law of the United States* (1887), p. 9.

“however much the states may have exercised usurped attributes of sovereignty during the unhappy Confederation; however much the conception of one people acting as a unity may have been forgotten or abandoned amid the jealousies and destructive rivalries of the commonwealths claiming substantial independence, the people had now [in adopting the Constitution] arisen, reasserted the original idea, and repudiated the assumption of local supremacy.”<sup>119</sup> Even if we ignored the question of historical accuracy, this doctrine would not answer those who asserted that the states were, in fact, separately sovereign before 1789.

Burgess held that, from the calling of the First Continental Congress in 1774, “there was something more upon this side of the Atlantic than thirteen local governments. There was a sovereignty, a state, not in idea simply, or upon paper, but in fact and organization.”<sup>120</sup> Burgess assumed that there existed at that time a national state in a “subjective condition,” as an “idea in the consciousness of the people.” He argued that the adoption of the Constitution was a national act, and that ultimate sovereignty in the United States rested in the national constitutional convention. “The real organization of the United States as the sovereign, the state, in our present system, was in the Constitutional Convention. This, like the Continental Congress, was a single body, representing the whole people of the United States.”<sup>121</sup> In his view, the Constitution derived its validity, not from the ratification of the necessary number of state conventions, but from the authority of the federal constitutional convention. There is no historical evidence to support this contention.

Another group of nationalist theorists admitted that the states were severally sovereign prior to 1789, and that the Constitution was the result of their voluntary agreement or compact. They held, nevertheless, that in ratifying the Constitution they gave up their separate sovereignties and created a truly sovereign, national state. The juristic impossibility of this process was made plain by the logic of Calhoun. In general, the nationalist school fell back upon the doctrine of Webster, that, although the states were severally sovereign originally, and although the Constitution was ratified in conventions convened separately for that purpose by the states, nevertheless the adoption of the Constitution was not the act of the

<sup>119</sup> *An Introduction to the Constitutional Law of the United States* (1868).

<sup>120</sup> *Political Science and Comparative Constitutional Law*, I, 98-108.

<sup>121</sup> *Ibid.*, I, 143.



states, but of the people of the whole United States, using the political machinery of the existing states as a convenient method of asserting their subjective feeling of national unity. This doctrine put the controversy upon a plane where proof was difficult, since it depended upon the state of mind of the people who ratified the Constitution. Contemporary statements would indicate that the people who ratified the Constitution believed they were acting as separate states. The view that the Constitution was a compact among the states was generally held.

More recent theory of the nature of the American Union<sup>122</sup> asserts that the framers of the Constitution, holding the popular sovereignty and social contract theory of the state, did not foresee the inconsistency of their divided sovereignty doctrine or the ambiguity of their statement that ultimate sovereignty resided in the people. Some of the people may have regarded the national government as merely the agent of the states, which, possessing sovereignty, might refuse to obey federal laws or might refuse to remain in the Union. Others may have regarded the national government as the agent of a national state, possessing sovereignty, and superior to the separate states. Still others may have regarded the Union and the states as equal in legal status, each possessing supreme authority in its own sphere as marked out by the Constitution. This point of view would break down when the necessities of practical political life would compel a decision on some controversial issue. As time passed, while lip service was given to the doctrine of divided sovereignty, and while assertions of States' rights were made by minority groups as a defense against expanding federal power, the actual conditions of American life led to the general point of view that the national authority was legally superior to the several states. President, Congress, and Supreme Court adopted a liberal construction of national power. In practically every test the sovereignty of the Union was asserted and maintained. The claim that the states in the Union had a coördinate legal status with the national authority did not correspond with the facts in the case. Finally, history brought it about that those who were unwilling to admit the juristic conclusion that followed from the facts subjected the controversy to the physical test of war. As a result of the war, federal authority was finally established; and since that time there has been no serious claim that the

<sup>122</sup> W. W. Willoughby, *The Fundamental Concepts of Public Law* (1924), Ch. XIV.

United States is not a sovereign state or that the states are anything except non-sovereign bodies politic within the Union and subject to its superior authority, though with a constitutional status and with large governing powers.

In recent years the question has been reopened in connection with the expansion of federal powers, especially in the regulation of commerce, in the indirect control exercised through subsidies to the states,<sup>123</sup> and in the control which the national government may exert through the treaty-making power.<sup>124</sup> In upholding a treaty, which it was claimed destroyed the constitutional powers of the states, Justice Holmes said: "When we are dealing with words that are also a constituent act, like the Constitution of the United States, we must realize that they [the framers] have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation."<sup>125</sup>

The political philosophy of the twentieth century gave considerable attention to a new theory of nationalism, combining it with the growing democratic movement and the demand for social reform. Numerous writers<sup>126</sup> urged that the authority of the national government should be increased, because it was the best instrument for the achievement of democratic ends. Political interest centered in national issues and national personalities, and the fear of centralized power diminished. The Sixteenth, Eighteenth, and Nineteenth Amendments transferred important questions from state to nation; the federal courts extended their jurisdiction over a broad field of legislation, and the administrative departments of the federal government penetrated steadily into the life of the states. Many attempts were made to secure desired reforms through national action; because of the inefficiency of the states, public

<sup>123</sup> S. G. Lowrie, "Centralization versus Decentralization," in *American Political Science Review*, Aug., 1922; A. F. MacDonald, "The American Subsidy System," in *National Municipal Review*, Nov., 1925; H. L. West, *Federal Power: Its Growth and Necessity* (1918); F. Pierce, *Federal Usurpation* (1908); W. Thompson, *Federal Centralization* (1923).

<sup>124</sup> R. Hayden, "The States' Rights Doctrine and the Treaty-Making Power," in *American Historical Review*, XXII, 566-585 (1917).

<sup>125</sup> *Missouri v. Holland*, 252 U.S., 416 (1920).

<sup>126</sup> J. W. Burgess, "The American Commonwealth," in *Political Science Quarterly*, I (1886); H. Croly, *The Promise of American Life* (1900), *Progressive Democracy* (1914); F. J. Goodnow, *Social Reform and the Constitution* (1911); T. Roosevelt, *The New Nationalism* (1910); W. Thompson, *Federal Centralization* (1923).

opinion turned to the federal government for a solution of its difficult problems.<sup>127</sup> Both political parties favored this process when in power and criticized it when in opposition. Roosevelt's vigorous nationalism was criticized by the Democrats as unconstitutional and autocratic. When Woodrow Wilson assumed similar powers, he was denounced by the Republicans for his "unconstitutional and dictatorial course." On this question the Republican platform of 1920 contained an almost perfect paraphrase of the Democratic platform of 1904. The doctrine of States' rights lost all trace of real vitality, but was revived from time to time by minority groups or sections as a protection against the nationalism of the party in power.

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## 412 HISTORY OF AMERICAN POLITICAL THOUGHT

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## CHAPTER XIII

### NEW ISSUES AFTER THE CIVIL WAR

#### 1. POLITICO-ECONOMIC THEORIES

After the Civil War the two great issues that had dominated political thought in the United States—the relation of the states to the Union and the institution of slavery—ceased to be of primary importance. International relations did not become prominent until after the Spanish War. The way was thus cleared for a consideration of the new problems created by far-reaching changes in industrial and social conditions and for an application of the principles of democracy to the issues created by these changes. A new industrial aristocracy, led by the captains of industry, came into prominence and began to take an active part in politics.

In its broader aspects, the Civil War had been a social revolution in which the capitalists, laborers, and farmers of the North and West had driven the planting aristocracy of the South from its place of power in the national government. During and after the war, the victorious Republicans revived the protective tariff, re-established the national banking system, made lavish grants for internal improvements, adopted the Homestead system,<sup>1</sup> favored immigration, and prevented the states from interfering with "sound business" by the "due process" clause of the Fourteenth Amendment. Economic problems dominated political thought.

Occupied with the adjustment of problems growing out of the war, the government at first paid little attention to the economic and social stirrings of the period. Petitions asking for relief of the conditions in industry were laid on the table by Congress. The request of the national convention of the Labor group in 1868 that a Department of Labor be created was ignored. The Windom report of 1874, recommending public regulation of railroads, was not followed. Not until the eighties did the national government give serious consideration to the new problems. American theory was opposed to paternalism. The political power of the central govern-

<sup>1</sup> The slogan "Vote yourself a farm" had been a powerful appeal to the Western farmers to support the Republican party.

ment had increased, but there had been little extension of its power in the economic field. It took the position that business was an individual concern, which might receive aid and encouragement, but should not be restricted or controlled. Laissez-faire had been the accepted doctrine of the mass of Americans, and the various democratic movements had opposed all attempts to commit the government to schemes of economic expansion or control.

The economic revolution that followed the war, the growth of capitalism, and the shift of political power from South to North made an impress on all the branches of the federal government, especially upon the Senate. A new type of practical men,<sup>2</sup> who insisted upon party regularity, and who were closely associated with the new business enterprises, came into leadership. The new statesmen were not students of history and politics, as Madison had been, nor keen theorists like Calhoun, nor orators like Webster. They were men of affairs, in harmony with the changed conditions of American life, and interested in directing the energies of the government toward the development of natural resources and the creation of great business organizations. Their political philosophy was that of their contemporaries in England, the Cobden-Bright school; they believed in the widest application of the principle of private property, and the narrowest restriction of state interference, except to preserve order and to aid railways and manufactures in their undertakings. They insisted upon a legalistic interpretation of the Constitution, and ignored the popular demand for a readjustment of social and economic conditions.

Population increased rapidly, especially through increased immigration from Europe. Moreover, the type of immigrant changed. The earlier immigration had come from northern Europe, had been of stock similar to the original settlers, and had brought with it essentially similar institutions and traditions. This population was easily absorbed into our national life. The new immigration came increasingly from southern and eastern Europe. It introduced a more heterogeneous element into the race stock of the American people and created difficult social, economic, and political problems. Its lower standard of living, its indifference or hostile attitude to political authority, its radical tendencies, and its susceptibility to manipulation by political bosses created marked changes in Ameri-

<sup>2</sup> Roscoe Conkling was typical of this group. See A. R. Conkling, *Life and Letters of Roscoe Conkling* (1889). Blaine, Randall, Hanna, Aldrich, and Penrose belonged to the same class.



can life. Not only was there a steady westward movement of population, but there was a tendency to concentrate in cities. America ceased to be an agricultural, rural country, and became increasingly an industrial, commercial, and urban nation. Concentration of population and of industry was taking place, and the sources of power were rapidly changing, geographically, socially, and politically. The political philosophy that was applicable to an agrarian, rural population needed considerable readjustment to meet the new conditions. As early as 1871 Henry Ward Beecher declared, "We are to-day in more danger from overgrown pecuniary interests—from organized money—than we ever were from slavery, and the battle of the future is to be one of gold and silver."

The period was characterized by rapid economic expansion. Agriculture and manufacturing, in particular, increased on a vast scale, and national prosperity was evident. Large combinations of capital began to appear and great fortunes were accumulated by certain individuals and families.<sup>3</sup> The tendency to concentrate wealth affected the theories of the many and of the few, and led to marked changes in political doctrine and practice. New groupings of economic forces became active in the political life of the nation. On one hand appeared the concentration of capital in the form of corporations; on the other, the organization of labor into trade-unions. The railroads, the public utilities in the cities, and certain fundamental commodities, such as steel, oil, sugar, coal, and tobacco, were organized in large corporate form. Corporations combined to form trusts, controlling vast financial power, and employing millions of men. Their activities involved difficult legal and political problems.<sup>4</sup> Trade-unions, at first considered illegal combinations, obtained a definite legal position after the Civil War. Their membership increased, and with the formation of the American Federation of Labor in 1881, a national organization was perfected which possessed a million members by the end of the century. The struggle which they were able to wage with the corporations also acted as a solvent on earlier legal and political doctrines.<sup>5</sup> Agriculture, though less coherent in its organization, also showed a tendency toward combination. The Granger movement of the seventies exerted

<sup>3</sup>G. Myers, *History of the Great American Fortunes* (1910); A. Youngman, *The Economic Causes of Great Fortunes* (1909).

<sup>4</sup>H. W. Beecher, "Cause and Cure of Corruption in Public Affairs," in *Sermons*, VII, 66-69 (1871). D. C. Cloud, *Monopolies and the People* (1873).

<sup>5</sup>J. R. Commons and others, *History of Labour in the United States* (2 vols., 1918); R. F. Hoxie, *Trade Unionism in the United States* (2nd ed., 1923).

notable political influence, and the Farmers' Alliance of the eighties created a political party of considerable importance. The industrial group, the commercial group, the agricultural group, and the labor group formed distinct institutions and ideals. Each demanded the attention of political leaders, and influenced the development of political doctrines and movements. Women also began to be a factor in industry and the professions, to demand equal educational opportunities, and to strive for equal legal and political status.

The political ideals of the various economic groups showed marked differences. The agricultural group, which had been dominant in the early history of the nation, showed distinct independence and individuality. Together with the small merchants, the majority of those in the professions, and the unorganized laborers, they formed the middle class of American society. As owners of property and as employers of labor, the farmers were individualists; but their experience with railroads and monopolies led them to favor a collectivist policy on the question of regulation of corporations. They opposed both the trusts and the labor unions. They favored democracy and were in general opposed to extensive governmental authority, though they were quite willing to use the government to curb unfair competition or monopoly.

The commercial and industrial groups assumed a dominant position after the Civil War. The war itself gave a stimulus to manufacturing and, in the period following, the growth of large-scale combinations destroyed many of the small business enterprises. Business control was exercised by the men who merged and centralized the scattered industries. Toward the end of the century the balance of foreign trade turned in favor of the United States, and attention was increasingly directed to the opportunities of American business in foreign lands. Manufacturing monopolies, transportation companies, and financial institutions became interlocked in a complicated and powerful system. "Wall Street" became the hated opponent of the farmer and laborer. "Captains of industry" began to take a hand in politics, to control the party machinery, and to place their lieutenants in political office. They were interested in preventing hostile legislation, in avoiding taxation or regulation, and in securing advantages in the forms of tariff protection, franchises, and favorable charters. In general, they desired non-interference on the part of the government and were able to secure it, either because of the weakness and inertia of the

government or through political influence and corruption. They believed in patriotism, in a vigorous policy in foreign affairs, in strict maintenance of law and order when property was threatened in industrial disputes; at the same time they had a contempt for the efficiency of government in general, and viewed it as something likely to be dangerous if it became energetic in domestic affairs. Government was a necessity, to be used when needed, but not to be allowed to become troublesome. In general, their theory was conservative and individualistic, and their methods often brutal and ruthless. Until the close of the century they were, in general, successful in preventing any serious limitations upon their power. American government, in city, state, and nation, through the manipulation of party machinery, was largely controlled by the new "plutocracy."

In contrast to the conservative and individualistic theories of the agricultural and industrial groups, the doctrines of organized labor tended toward a radical and socialistic point of view. Large-scale industry and the machine process created an impersonal relation between employer and employee; and the formation of unions, with their principle of collective bargaining, emphasized fraternal and collective doctrines. The unions, as centers of economic and political power, abandoned the theory of individual enterprise and demanded social action and social reform. The Knights of Labor, organized in 1869, adopted the motto, "The injury of one is the concern of all," and started a fund for "brothers in need against the aggression of employers." The individual was subordinated to the group, and earlier individualistic traditions were abandoned. The laborers demanded freedom to organize and to strike, but favored extensive governmental action for purposes of social justice and welfare. Since business was interfering with the government through powerful "lobbies," the government, purged of its corruption, was justified in interfering with business. As economic discontent became more widespread, a strong movement in favor of a more extensive application of the principles of democracy, and a more vigorous use of its powers to promote the interests of the masses came into evidence. While the absence of fixed classes and the general mobility of persons and property prevented the formation of a powerful socialist political party in the United States, the political philosophy of socialist thinkers,<sup>6</sup> following the English

<sup>6</sup>In 1888 Edward Bellamy published his *Looking Backward*, a utopian picture of the advantages of a coöperative society. This book was widely read and exerted considerable influence on political thought. See also W. D. Howells, *A Traveller from Atruria* (1894).

rather than the Continental point of view, exerted great influence. The labor doctrines were confused because of a broad division between socialists and trade-unionists, and because of subdivisions in each group—socialists and anarchists on the one hand, and the Knights of Labor and the American Federation of Labor on the other. This conflict of factions and policies delayed the progress of liberal reform.

The new economic issues led to a reëxamination of the whole theory of democracy. In the beginning, American democracy was based upon a natural-rights philosophy. It aimed at independence, the abolition of the principle of heredity, representative government, the supremacy of the legislature, vigorous local authority rather than centralized control, an elaborate system of checks and balances, and the safeguarding of liberty and property from governmental interference. Jeffersonian democracy rested upon an agrarian foundation in opposition to the commercial interests of its day. It gave an impetus to the democratic spirit, but made no marked change in institutions. Jacksonian democracy represented the reaction of the South and West against the mercantile East. The National Bank was the center of attack. The suffrage was widened, popular election for short terms was emphasized, and the position of the executive, as a popular leader, was much strengthened. No important change, however, was made in the theory of democracy. The main aim was to extend the accepted principles in practical application. The Civil War period applied the principles of democracy to black as well as white, insisting that all men were entitled to civil and political rights. It was accompanied by a strong national spirit that broke down the localism of the earlier period. Union and liberty were emphasized. With these issues settled, attention was turned to the difficult question of applying democracy to the new issues created by urban and industrial development. Economic democracy, rather than political and civil rights, came into prominence; and new meanings were given to liberty, equality, and justice. Such issues as the currency, taxation, the tariff, the regulation of corporations, and labor legislation came into prominence. The connection between democracy and the party system also demanded attention, with the growth of the spoils system, the rise of the boss and the machine, and the connection between politics and business. A widespread demand arose for the democratization of the parties, and for the use of political power to secure greater economic equality and justice. The movement for political reform

demanded the merit system, the Australian ballot, direct primaries, the short ballot, and simplified and honest city government. Efficiency as well as democracy in government was emphasized by this group. The most valuable result of the efforts of these "progressive" reformers was to educate public opinion and to change the popular standards of political morality. Questionable methods, both in business and in politics, were mercilessly condemned.

Early in the seventies the farmers of the West started the movement for economic relief through legislation.<sup>7</sup> The abuses which they attacked included the conditions under which their crops were marketed, the excessive interest rates on farm mortgages, the discrimination in taxation against real estate as compared with personal property, the inadequate representation of the agrarian class in legislatures, and the exploitation of the farmers by the manufacturers under the patent and tariff laws. At first favorable to the railroads, the attitude of the farmers became decidedly hostile, because of the high charge of storing their grain in elevators controlled by the railroads and because of excessive freight rates. The struggle against the railroads was carried on in the state legislatures and in the state courts. A new constitution in Illinois authorized the legislature to "pass laws to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger traffic." Laws passed in accordance with this provision in 1871 were declared unconstitutional by the supreme court of the state in 1873. On the Fourth of July of that year, the farmers issued a "Farmer's Declaration of Independence" in which they stated: "We, the producers of our state, in our several counties assembled, do solemnly declare that we will use all lawful and peaceable means to free ourselves from the tyranny of monopoly." When the "Granger cases" came before the Supreme Court in 1876, the court upheld the right of the state to fix maximum rates for the storage of grain in elevators.<sup>8</sup> In this decision Chief Justice Waite made the significant statement that when "one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good." In 1886, however, the court<sup>9</sup> reversed previous decisions, and declared that the power to regulate interstate commerce was lodged in Congress alone. Little

<sup>7</sup> S. J. Buck, *The Granger Movement* (1913); *The Agrarian Crusade* (1920).

<sup>8</sup> *Munn v. Illinois*, 94 U.S., 133 (1876).

<sup>9</sup> *Wabash Railroad Company v. The State of Illinois*, 118 U.S., 557 (1886).



was accomplished in the effort to control monopolies through state action.

The other main object of the Granger movement was the effort of the farmers, as a debtor class, to secure cheap currency. This demand was supported by the industrial laborers of the East. Such action could be accomplished only through Congress, since the Constitution forbids the states to "make anything but gold and silver coin a tender in payment of debts." The Greenback party was formed around the demand for paper currency based upon the credit of the government.<sup>10</sup> When the Greenback movement failed, the currency dogma took the form of an even more widespread demand for the free and unlimited coinage of silver.<sup>11</sup> This policy finally became the nucleus of a great political campaign under the leadership of Bryan. These early attempts to formulate an aggressive democratic program followed the precedents of the Jacksonian period. As his attack had been directed against the National Bank as the stronghold of financial and political power, his doctrines were restated in the new warfare against the "money power" of the new industrial aristocracy. The currency campaign and the attacks on monopoly were attempts to interpret democracy in terms of money, as in the days before the war. They drew together many elements of social unrest and political protest who believed that the main issue was that between the many and the few. The phenomenal growth of the Populist party, and the acceptance finally of many of its principles by the Democratic party, indicated the spread of these ideas on a national scale. In spite of the small political results accomplished by the early crusaders for social and industrial justice, their influence continued until many of their demands were written into law.

Another program of economic and political reform was based on the question of land ownership and land taxation. Led by Henry George,<sup>12</sup> a system of land taxation was proposed which would abolish taxation on the improvements on land and lay a "single tax" on the land itself. It was argued that this would prevent the "unearned increment" which accrued to the holders of the land, would prevent congestion in cities by compelling vacant lots to be utilized, would provide a more just and efficient system of taxation,

<sup>10</sup> See the "Brickdust Sketches" in *Pomeroy's Democrat*.

<sup>11</sup> See Harvey's *Coin's Financial School* (1894).

<sup>12</sup> See his *Progress and Poverty* (1879). See also L. F. Post, *The Taxation of Land Values* (1912); T. G. Shearman, *Natural Taxation* (1897); A. N. Young, *The Single Tax Movement in the United States* (1916).



and would lead to many desirable social and economic reforms. Objection on the part of the farm owners, and constitutional restrictions on the taxing powers of cities prevented any considerable application of this principle. The theory of the single tax led naturally to the socialistic doctrine of land nationalization, by which the ownership of land would be taken over by the government. In general, however, the Single Taxers and the Socialists were antagonistic, the former having no interest in the other aspects of socialism, and the latter believing that emphasis on the single tax was an obstacle to the acceptance of a thoroughgoing scheme of social reorganization.

The concentration of economic power in large corporations led to various movements of opposition. The agrarian and small business groups believed that combinations should be prevented; the labor group desired government control of corporations and the remedy of abuses resulting from unfair competition. Many doctrines concerning the proper relation of the government to big business appeared.<sup>13</sup> Some continued the laissez-faire tradition of the earlier period, holding that the government should not interfere with private business, and that the proposed remedies were unconstitutional and undesirable. Later they emphasized the value of large combinations for purposes of competition in foreign trade. Others insisted that, when the actions of corporations conflicted with the public interest, it was the duty of the government to prevent large-scale combinations or to regulate their affairs. Still others, who recognized the economic advantages of large-scale organizations, proposed full publicity of their finances and the prevention of unfair practices. The more extreme view favored government ownership of "natural monopolies" or even collective ownership of all the basic means of production and distribution, as well as an extensive program of social legislation.

The railroads were the first center of attack.<sup>14</sup> The Grangers were especially active in this movement and did much to awaken public sentiment and to secure regulative measures in the state legislatures. State regulation, however, was not successful in preventing the process of consolidation,<sup>15</sup> and the Supreme Court held that a business that affected the public interest was subject to regu-

<sup>13</sup> W. Gladden, *The New Idolatry* (1905); *Social Facts and Forces* (1897).

<sup>14</sup> A. T. Hadley, *Railroad Transportation* (1885); *Tenth Census*, VIII, 96-130 (1880); C. F. Adams, Jr., *Railroads: Their Origin and Problems* (1886); C. F. Adams, Jr., and H. Adams, *Chapters of Erie and Other Essays* (1871).

<sup>15</sup> F. H. Dixon, *State Railroad Control* (1896).

lation.<sup>16</sup> It also suggested that it was the duty of Congress, not of the state legislatures, to regulate interstate transportation.<sup>17</sup> Not until 1887 was any serious attempt made to extend national control over the great economic interests.<sup>18</sup> Various bills had been passed by the House, but the Senate had done nothing but listen to a report of the Windom Committee in 1874. Increased pressure of public opinion and the passage by a large majority in the House of a bill prohibiting rate discriminations, rebates, and pools finally compelled the Senate to take action. A committee, with Senator Cullom<sup>19</sup> as chairman, was appointed to take testimony on the question of national control of interstate commerce. As a result of its report,<sup>20</sup> the Interstate Commerce Act<sup>21</sup> was passed in 1887, prohibiting rebates, discriminations between persons, places, and commodities, pooling, larger charges for short than for long hauls, and providing for publicity of rates. A commission appointed by the President was given power to receive complaints, conduct hearings, demand reports, and invoke the aid of the federal courts to punish offenders. The work of the commission was hampered by its limited powers, by the attitude of the courts, and by evasive practices on the part of the railroads. The commission declared that the situation was "intolerable both from the standpoint of the public and the commission"; and Justice Holmes called the commission a "useless body for all practical purposes." Nevertheless, the passage of the Interstate Commerce Act marked the beginning of the movement toward social control and the end of the period of unchecked individualism in business. It laid the foundation for the policy of governmental interference in social and economic questions; and the growing public demand for more extensive control led to the passage later of a series of acts<sup>22</sup> that increased the powers of the commission and made its decisions more effective. The Act also marked an important step in the transfer of jurisdiction over social and economic activities from the states to the national government.

Attempts to regulate other corporations soon followed. Between 1870 and 1890 the capital invested in manufacturing plants in-

<sup>16</sup> *Munn v. Illinois*, 94 U.S., 113 (1876).

<sup>17</sup> *Wabash, St. L. and P.R.R. v. Illinois*, 118 U.S., 557 (1886).

<sup>18</sup> B. H. Meyer, *Railway Legislation in the United States* (1903).

<sup>19</sup> See his *Fifty Years of Public Service* (1911).

<sup>20</sup> *Senate Reports*, 49th Congress, 1st sess., No. 46.

<sup>21</sup> *U.S. Statutes at Large*, XXIV, 379-387.

<sup>22</sup> The Elkins Act of 1903, the Hepburn Act of 1906, the Mann-Elkins Act of 1910, and the Esch-Cummins Act of 1920.

creased enormously, but the number of plants diminished.<sup>23</sup> This process of consolidation had decided economic advantages, but was attended by certain social and political evils.<sup>24</sup> It tended toward monopoly of natural resources, led to fraud in the issue of securities, gave big business a dangerous influence in politics, and established an autocratic control over production and finance, which was resented by democratic public sentiment. Anti-monopoly opinion grew rapidly in the eighties, and numerous investigations and reports were followed by demands for legislation. President Harrison's first message recommended that "earnest attention should be given by Congress to a consideration of the question how far the restraint of those combinations of capital called 'trusts' is a matter of federal jurisdiction." Investigation by a Senate committee in 1888-1889, exposing the methods of the oil,<sup>25</sup> sugar, and beef trusts, was followed by the passage of the Sherman Anti-Trust law in 1890.<sup>26</sup> This law declared its purpose to be "to protect trade and commerce against unlawful restraints and monopolies." It declared illegal "every contract, combination in the form of trust or otherwise, or conspiracy or restraint of trade among the several states or with foreign nations." In introducing this bill, Senator Sherman said: "The popular mind is agitated with problems that may disturb the social order, and among them all none is more threatening than the inequality of condition, of wealth, and opportunity, that has grown within a single generation out of the concentration of capital into vast combinations to control production and trade, and to break down competition. . . . Congress alone can deal with them."

As in the case of the Interstate Commerce Act, governmental enforcement of the Sherman Act was for some years difficult. Justice Harlan called it "a piece of useless legislation." The Act did not distinguish between desirable and undesirable restraints of trade, nor was it easy to determine when a combination restrained interstate commerce; and the burden of judgment was placed on the courts with resultant confused decisions.<sup>27</sup> Clever lawyers made it easy for the trusts to evade the provisions of the Act, and American courts, dominated by natural-law conceptions, were disposed to look doubtfully upon legislative innovations. Not until the be-

<sup>23</sup> Von Halle, *Trusts or Industrial Combinations in the United States* (1895).

<sup>24</sup> See H. D. Lloyd, *Story of a Great Monopoly* (1881), exposing the methods of the Standard Oil Company; also his *Wealth Against Commonwealth* (1894).

<sup>25</sup> I. Tarbell, *History of the Standard Oil Company* (1904).

<sup>26</sup> *U.S. Statutes at Large*, XXVI, 209-210.

<sup>27</sup> W. H. Taft, *The Anti-Trust Act and the Supreme Court* (1914).

ginning of the twentieth century, when President Roosevelt revived interest in the problem and insisted that public welfare should be the criterion to distinguish between good and bad trusts, was the Act more clearly defined and more effectively enforced. In 1914 the Federal Trade Commission was created, with regulatory, advisory, and investigative powers.<sup>28</sup> It was given authority to prohibit unfair competitive practices and to supervise abuses resulting from trade. Other acts indicating the movement toward social control included the Employer's Liability Act of 1906, the Cotton Futures Acts of 1914 and 1915, the Clayton Act of 1914, the Adamson Act of 1916, the Child Labor Act of 1916, and the Federal Child Labor Tax of 1919.

In the early period of combination, American opinion was inclined to oppose the process and to favor competition among small industries and freedom from governmental interference. Opinion gradually shifted to the position that combination was inevitable and that public policy should aim at the regulation of large combinations. In the cities a strong tendency toward municipal ownership of public utilities made rapid progress. Many employers believed that the benefits of large-scale production should be retained, but that efforts should be made to remedy the evils that arose from the new conditions. The socialists held that the growth of combinations was inevitable and desirable, but that the final outcome should be governmental ownership. The labor unions also believed that it was impossible to check combination, but insisted that the resultant evils could be mitigated by laws to protect the laborers and by industrial organization for the purpose of collective bargaining.

While the currency, railroad, and trust problems were the main issues of the period, the tariff question also divided public opinion.<sup>29</sup> On the one hand, the protective policy was upheld as the cause of high wages, the champion of American labor, the source of commercial development, and the basis of national prosperity. On the other hand, it was attacked as a means of governmental corruption, a prime cause of the creation of trusts, and a means of enriching the few at the expense of the many. Tariff revision and free trade were urged as the proper policy. The nationalistic sentiment which had led many to favor a protective tariff before the

<sup>28</sup> J. M. Harlan and L. W. McCandless, *The Federal Trade Commission* (1916). On the limits of its powers, see *Federal Trade Commission v. Matz*, 253 U.S., 421 (1920).

<sup>29</sup> F. W. Taussig, *Tariff History of the United States* (4th ed., 1898), pp. 155-360.

Civil War was abandoned, especially in the West, when the economic results began to be more clearly apprehended. In general, however, the government was controlled by those who favored protection. The high duties of the Civil War period were continued, although a half-hearted effort was made in 1883 to grant some concessions to the public demand for a more moderate tariff system. By 1890, however, the McKinley Tariff Act began an unmistakable movement in the direction of still higher protection. This policy met a decided rebuke at the polls in 1890 and 1892, and was followed by a revision downward in the Wilson Act of 1894, without, however, making any serious change in the nature of our tariff legislation. The financial depression following 1893, and the concentration of political interest on the question of free silver, diminished the opposition to the tariff; and the Dingley Act of 1897 marked a new victory for the aggressive supporters of protection, and raised the general average of duties to the highest point since the Civil War. This tariff remained unchanged for twelve years. In spite of widespread dissatisfaction, the United States, through the influence especially of the industrial interests in the Senate, stood firm on the principle of protection.

The economic issues, which became increasingly important toward the close of the century, divided political thought into broad cleavages of conservative and radical opinion. The adherents of the conservative policy either selfishly disregarded the interests of the masses, believed in the "divine right of property," and took the "public be damned" attitude, or asserted that the welfare of the masses would be better safeguarded by the industrial leaders, if not interfered with, than by the people themselves. They frequently clothed their arguments in the garb of morality or of jurisprudence, or referred to the earlier doctrines of natural law and of liberty to justify their opposition to governmental interference. The doctrine of evolution, with its emphasis on the survival of the fittest, was also useful to their purposes.<sup>30</sup> They opposed any tendency toward paternalism in government, and believed that national prosperity depended upon non-interference with the natural laws of trade and a strict limitation on the powers of government in behalf of property rights. They feared the "tyranny of the majority," upheld the system of checks and balances, and placed their dependence upon the constitutions and the courts.

<sup>30</sup> Herbert Spencer's *The Man versus the State* exerted considerable influence in America.

Their opponents, showing wider variation in their plans of reform, agreed on the necessity of extending the functions of the state and on making the government more directly responsible to public opinion. They insisted that the supreme issue was the encroachment of the few on the rights of the many, attacked the connection between big business and the political machine, and argued that freedom must be positive, not negative, that the law must aid the individual and promote social welfare, and not merely protect established interests. The opposition to the "money power," to the railroads, to industrial combinations, and to the tariff were phases of a growing belief that the real issue was between democracy and plutocracy;<sup>31</sup> and the numerous proposals for specific reforms represented a general attempt to interpret the philosophy of democracy in its relation to the new conditions in the economic world. In general, the East, as the creditor section, was conservative; the West, in debt to the older settlements, was radical. The East distrusted radical thought and feared that the economic expansion of the West would transfer political control to a section whose philosophy seemed revolutionary.

When the Supreme Court in 1895,<sup>32</sup> by a vote of five to four, declared the federal income-tax law unconstitutional, conservative opinion rejoiced. The New York *Sun* declared: "The wave of the socialist revolution has gone far, but it breaks at the foot of the ultimate bulwark set up for the protection of our liberties." The New York *Tribune* said: "Thanks to the Court our government is not to be dragged into a communistic warfare against the rights of property and the rewards of industry." On the other hand, Justice Harlan, in his dissenting opinion, asserted that the decision gave "aggregated wealth" a position of favoritism; and Populist journals throughout the country declared that the court was controlled by the capitalists in the same way that it had been controlled by the slave-owners before the Civil War. When McKinley was nominated for the Presidency in 1896, he appealed for popular support against radical policies, with their "dangerous and revolutionary assault against law and order."

## 2. PARTY DEVELOPMENT, 1865-1897

In February, 1865, the editor of *Harper's Weekly* wrote: "We are at the end of parties." Of the party names in use at the open-

<sup>31</sup> W. J. Bryan, *Speeches*, II, 59, 88, 100, 119.

<sup>32</sup> *Pollock v. Farmers Loan and Trust Co.*, 157 U.S., 429, and 158 U.S., 602.



ing of the war, only "Democratic" remained in general use. The party in power in Congress was seriously divided on matters of reconstruction; nevertheless, in its career as a war party it had acquired a number of policies that would mark it distinctly as a party when peace was resumed. When the more radical leaders secured control of Congress and carried out their plan of reconstruction in opposition to President Johnson and to the moderate men of their party, the leaders of the Democratic party saw an opportunity to retrieve its fortunes. They issued in 1866 an address to the people of the United States, pledging their allegiance to the federal Union, but insisting that "we must maintain unimpaired the rights, the dignity, and the equality of the states, including representation in Congress and control of domestic concerns." This was intended as a statement of a reconstruction principle on which all who were opposed to the extreme measures of the Congressional radicals could agree. They hoped to organize on this basis a "National Union" party.

In the campaign of 1864 the supporters of Lincoln had called themselves "Unionists," but with the end of the war, the name "Republican" was resumed by the leaders of the war party. The Democrats hoped to attract to their ranks many Unionists who had favored the moderate policy of Lincoln and Johnson, in opposition to the radical Republican majority which was determined upon sectional subjugation. Many former Whigs and some Republicans who were dissatisfied with those in control of that party, joined the Democrats; and they made noticeable gains, especially in the border states. The name *Unionist*, however, did not survive. By 1866 *Republican* and *Democrat* were in general use, the new realignment being based on the reconstruction issue. The tariff question was also revived, the Democratic party declaring "that the people and especially those of the agricultural states, have suffered too long the exaction of high tariffs, and as the representatives of an agricultural and laboring population, we demand that their substance shall no longer be extorted from them in order to fill the pockets of Eastern monopolists." From this time onward the two parties, Republican and Democratic, have retained their organization, and every effort to destroy these parties or to supplant them by new organizations has failed.

By 1868 the Democratic party, in addition to its policy of insisting upon the importance and the equality of the states and upon a tariff for revenue rather than for protection, added planks

favoring the retention of greenbacks as a permanent element in the currency and expressing its sympathy with the efforts of workingmen to "protect the rights and interests of the laboring classes of the country." The Republican party, although it retained control of the government, was seriously divided. New economic issues had arisen on which public opinion was not yet crystallized; and the corruption and graft that accompanied and followed the war,<sup>33</sup> the unscrupulous use of the patronage, and the manipulation of party machinery led to a widespread demand for reform. The organization leaders, the "Stalwarts," tried to avoid these issues; the younger members of the party, the "Independents," demanded reform of economic abuses and of the civil service. In 1872 the various elements of dissatisfaction organized a party of protest.<sup>34</sup> It denounced the abuses in government under the Grant administration, urged economic and governmental reform, and nominated Horace Greeley for the Presidency. The Democratic party, seeing no other hope of success, adopted the platform and the candidates of the Liberal Republicans.

The Republican organization was still strong enough, and the argument that the war party should be retained in power still appealed to enough voters, to secure the reelection of Grant by a large majority. The demand for reform continued,<sup>35</sup> however, and the party in power was naturally the target for criticism. The hard times of the period also furnished ammunition to the opposition. By 1874 the Democratic party secured a majority in the House. It was thus able more effectively to oppose the legislative policy of the Republicans, to point out abuses in the government, and to demand reform. The economic expansion that followed the war increased the interest of business men in politics, and the Republican party was supported by the great financial interests of the country. Opposition to the economic policies of the administration led to the formation of a Labor Reform party in 1872; and in 1876 representatives of farmers, laborers, and anti-monopoly organizations formed a party pledged to the retention of greenbacks.<sup>36</sup> The Greenback party believed in "fiat money." It held that money is the creature of law, not of custom, that gold is not

<sup>33</sup> Especially the "Crédit Mobilier" scandals in connection with the building of the Pacific railroads.

<sup>34</sup> E. D. Ross, *The Liberal Republican Movement* (1919).

<sup>35</sup> Public opinion in favor of reform was much influenced during this period by the cartoons of Thomas Nast in *Harper's Weekly*.

<sup>36</sup> F. E. Haynes, *Third Party Movements Since the Civil War* (1916).

a divinely appointed money, and that the law of the state could ordain that any cheap substance might be a legal tender for debts and taxes. This doctrine affected voters in all parties, and became the basis for the later theories of the Populists and the free-silver supporters. So widespread was corruption in government and so insistent the demand for reform that in 1876 both the major parties nominated candidates that represented the reform elements.

The Republican candidate, Hayes, asserted his independence of party leaders, favored a conciliatory policy of reconstruction, and urged civil service reform. He had the confidence of the Liberal Republicans, yet was able to coöperate with the Stalwarts who controlled the national committee. The Democratic candidate, Tilden, also was known as a reformer,<sup>37</sup> and his opposition to the Greenback element won him support from business interests who were dissatisfied with the Republican policies. The election was close, Tilden had a majority of the popular vote, but the electoral votes were disputed; and Congress created an Electoral Commission to decide the matter. It accepted the returns favorable to Hayes, and he was declared elected by the margin of one electoral vote.<sup>38</sup> In deciding this dispute the two parties changed sides on the issue of States' rights, the Republicans accepting the decisions of the state boards, the Democrats arguing that Congress should set aside the returns from the states. The result of this contest tightened party lines, though the independent attitude of the President soon alienated powerful elements in his party.

In accordance with his campaign promises, Hayes ordered an investigation of conditions in the South, and on the basis of this investigation withdrew federal troops from that section. By this executive act he brought to an end the Congressional policy of reconstruction. His action was bitterly opposed by radical abolitionists, such as Wendell Phillips and William Lloyd Garrison. It was also opposed by the Stalwart party leaders, who saw in it a loss of party strength and organization by the removal of Republican officials in the Southern states. Hayes then turned to civil service reform. In his letter of acceptance, he said: "We should return to the principles and practices of the founders of the government. They neither expected nor desired from the

<sup>37</sup> He had taken active part in the overthrow of the notorious "Tweed Ring" in New York City.

<sup>38</sup> P. L. Haworth, *The Hayes-Tilden Disputed Presidential Election of 1876* (1906). For the Electoral Count Act, see *U.S. Statutes at Large*, XIX, 227-229.

public officers any partisan service.' In a series of messages he called upon Congress to take action. The Republican leaders were unwilling to divest themselves of the sources of party strength and organization, but the President's insistence kept the question before the public and stimulated the efforts of those who favored his principles. A Civil Service Reform Association was organized in New York in 1877, and in 1881 a National Civil Service Reform League was formed at Newport, Rhode Island.<sup>39</sup> Hayes insisted that "there can be no complete and permanent reform of the civil service until public opinion emancipates Congressmen from all control and influence over government patronage." By his appointments and removals he did much to remedy the worst abuses, but his independent stand cost him the support of the leaders of his party. By 1878 the Democrats had a majority in both Houses of Congress.

Meantime the agitation for cheap currency continued. Neither major party was willing to take a definite stand on the question, and in 1878 the Labor Reform and Greenback parties combined to form the Greenback Labor party. Economic discontent was widespread, and many, especially in the Middle Western section, believed that currency reform was the remedy. The Coinage Act of 1873<sup>40</sup> omitted the standard silver dollar from the list of coins, and led to the charge that the government was attempting to demonetize silver. The advocates of silver referred to this act as the "Crime of 1873." Many demanded the free and unlimited coinage of silver, and a bill directing the Secretary of the Treasury to buy each month from two to four million dollars' worth of silver and to coin it into silver dollars was passed by Congress in 1878 over the President's veto.<sup>41</sup> This act also ordered the President to call a conference with the Latin American countries and with such European nations as he deemed advisable for the purpose of adopting a common ratio between gold and silver and for the establishment internationally of a bimetallic standard. This conference, held at Paris in 1878, refused to support the American proposal for international bimetallism.

While Hayes was not successful in his effort to reform the civil service nor to exclude the depreciated silver dollar from the currency, he was able to maintain the constitutional powers

<sup>39</sup> C. R. Fish, *Civil Service and the Patronage* (1905).

<sup>40</sup> *U.S. Statutes at Large*, XVII, 424-436.

<sup>41</sup> *Ibid.*, XX, 25, 26.

of the President against the attacks of the hostile Democratic Congress. Desirous of repealing the "Force bills," which provided for federal supervision of elections in the South, and unable to pass such legislation over the President's veto, Congress attempted to accomplish its purpose by attaching "riders" to appropriation bills necessary to carry on the government. Hayes insisted that the attempt of Congress to withhold appropriations unless the President assented to legislation which it attached to such bills would "result in a consolidation of unchecked and despotic power in the House of Representatives." After a series of vigorous vetoes, Hayes won his point.

The period from 1880 to 1890 was one of political deadlock. Writing his *American Commonwealth* toward the close of this decade, James Bryce said: "Neither party has any clear-cut principles, any distinctive tenets. Both claim to have tendencies. Both certainly have war-cries, organization, interests enlisted in their support. But those interests are in the main the interests of getting and keeping the patronage of the government."<sup>42</sup> Many issues of importance demanded action: the regulation of corporations, the control of immigration, the tariff, the currency, and the civil service. Neither party took a courageous stand on these issues, and little was accomplished until the close of this period.<sup>43</sup> Factions struggled for control of the parties, and each party was concerned chiefly in attacking the other and in securing control of the government.<sup>44</sup> The parties appealed to tradition and to party prejudice, and the party managers depended upon party names and party loyalty to hold their organizations together.

In general the Stalwart faction of the Republican party lost ground. Under the leadership of Conkling, they failed in their effort to renominate Grant for a third term at the close of Hayes's administration. They were disappointed when Arthur, who became President after Garfield's assassination, and who had been Conkling's lieutenant in New York, did not carry out their policies or use his power to their advantage. They were of little influence in the national convention of the party in 1884 when Blaine, who represented the middle, or "Half-Breed" faction of the party, was nominated for the Presidency. Many independent

<sup>42</sup> Vol. I, 653.

<sup>43</sup> For a good picture of the political life of their period, see John Sherman, *Recollections of Forty Years* (1897); J. G. Blaine, *Twenty Years of Congress* (1884-1886); A. R. Conkling, *Life and Letters of Roscoe Conkling* (1889).

<sup>44</sup> H. Tuttle, "The Despotism of Party," in *Atlantic Monthly* (Sept., 1884).

Republican leaders<sup>45</sup> and many independent and Republican newspapers, suspicious of Blaine, supported the Democratic candidate, Cleveland.<sup>46</sup> The remnants of the Stalwart faction gave Blaine but lukewarm support. The campaign degenerated into one of personal abuse and vilification, and the election of Cleveland marked the first great Democratic success since the Civil War. Old-line Republicans made the same dismal prophecies of national ruin that the Federalists had made when Jefferson became President in 1801.

Nevertheless, a more healthy rivalry between the parties replaced thereafter the factional strife within a party secure in power, and the South again became an important influence in the government. The period of reconstruction was finally at an end, waving of the "bloody shirt" no longer appealed to thoughtful voters,<sup>47</sup> and a united country was free to turn its attention to the pressing problems of economic and governmental reform. Cleveland, however, was able to accomplish little, because of opposition from a Republican Senate, and from a Democratic House opposed to his policies of economy, sound currency, and civil service reform. The surplus in the Treasury, resulting from the high tariff, was a great temptation to extravagance; and huge "pork barrel" appropriations for pensions, many of which were based upon fraudulent claims, and for river and harbor improvements, many of which were sheer waste, became a national scandal. The fact that the Prohibition party, of little importance previously, cast more than 150,000 votes in 1884 marked the growing importance of its issue in politics.

Some progress was made toward civil service reform. As early as 1871 the earnest opponents of the spoils system had secured the adoption of a provision authorizing the President "to prescribe such service of the United States as will best promote the efficiency thereof." The "newfangled notions" of the reformers were ridiculed by the Stalwart Republicans, who then controlled Congress; and President Grant, in his message of 1874, said that "if Congress adjourned without positive legislation on the subject of civil service reform, I will regard such action as a disapproval of the

<sup>45</sup> The Republican supporters of Cleveland were called "Mugwumps."

<sup>46</sup> See his *The Independence of the Executive* (1900); *Presidential Problems* (1904); G. F. Parker (ed.), *Writings and Speeches of Grover Cleveland* (1892).

<sup>47</sup> See letter by Ebenezer Hannaford in the *Nation*, XXXIX, 435 (Nov. 20, 1884).



system, and will abandon it." The sincere efforts of President Hayes to further the reform accomplished little against the opposition of Conkling and his followers. Not until President Garfield was assassinated by a crazed Stalwart office-seeker was public opinion sufficiently aroused to compel Congress to take action. In his message in 1882 President Arthur stated that "the people of the country, apparently without distinction of party, have given expression to their earnest wish for prompt and definite action." The result was the Pendleton Act (1883),<sup>48</sup> which created a Civil Service Commission and aimed to substitute merit for political patronage and to safeguard officials from removal in case they refused to contribute to the party funds. The number of officials brought under the provisions of the merit system was steadily extended in each successive administration, and the patronage power of the parties steadily declined.

In spite of the large surplus in the Treasury and a widespread demand for tariff reform, the Revenue Act of 1883 left the tariff practically unchanged. The accession of the Democrats to power under Cleveland reopened the question. Cleveland favored strict economy in public expenditures. In his inaugural address he recommended revision of the tariff. He repeated this recommendation in his message of 1886, and devoted his entire message in 1887 to the question. He argued for a lower tariff, "with due regard to the interests of the manufacturer, and with assurance that no injury would be done the workingman." Opposition within his own party and the control of the Senate by the Republican party prevented any important legislation.

The campaign of 1888 was fought mainly on the tariff issue. The Democratic convention, in renominating Cleveland, adopted a resolution favoring "the early passage of the bill for the reduction of revenue." Republican leaders thought that the time had come to have this question settled. William McKinley stated the position of the Republican party as follows: "We are uncompromisingly in favor of the American system of protection. We protest against its destruction, as proposed by the President and his party. They serve the interests of Europe; we will support the interests of America. We accept the issue, and confidently appeal to the people for their judgment." The manufacturing interests secured control of the Republican party organization and nom-

<sup>48</sup> *U.S. Statutes at Large*, XXII, 403-497.

inated Benjamin Harrison.<sup>49</sup> In his speech of acceptance, Harrison declared that the tariff was the "great issue." Large campaign funds were raised by both parties and considerable money was spent in the purchase of votes. Although Cleveland received more popular votes than Harrison, the latter carried all the large states and received a majority of the electoral vote. The Republican party also came into power in both houses of Congress. The inaugural address of the President again stated his intention to protect American industry and labor, and his appointments showed the powerful influence exerted by big business in the Republican party.

One phase of American political practice, which had been gradually developing, was given a marked impetus during this period. This was the power of the Speaker of the House of Representatives.<sup>50</sup> In England, the Speaker of the House of Commons was for a long time subservient to the King, though by the end of the seventeenth century the office had become fairly independent. The English Speaker was, however, a just and impartial presiding officer, and in no sense a leader of his House. In the American colonies the contest between the royal governor and the colonial assembly gave to the Speaker a position of leadership. He was the highest officer in the government elected by the people, and his office became prominent and influential. The framers of the federal Constitution provided that "the House of Representatives shall choose their Speaker," and it is probable that they expected the Speaker to be a political leader as well as a moderator. With the rise of parties, he became the leader of the party in control of the House. As early as 1790 he was given the power to appoint the committees of the House, and with the increase in its membership and the growing mass of legislation before it, the committees came to exert a decisive influence on legislation.

The development of the Speaker's power was due largely to the work of the able men who were chosen to that office. The election of Henry Clay in 1811 marked an important step. Representing the Young Republicans who demanded a more vigorous policy, Clay increased the parliamentary powers of the Speaker, strengthened the personal influence of the office, and established its position of legislative leadership. He manipulated parliamentary rules,

<sup>49</sup> See his *Public Papers and Addresses* (1893), *This Country of Ours* (1897); J. S. Shriver (ed.), *Speeches of Benjamin Harrison* (1891).

<sup>50</sup> M. P. Follett, *The Speaker of the House of Representatives* (1896).

took active part in the deliberation of the House, and was able to put into effect the policies in which his party was interested, even against the opposition of the President. In the struggle over slavery, the clash of parties and factions prevented the Speakers from exercising a decisive influence, but after the Civil War the growth of the Speaker's power was unmistakable. James G. Blaine, who was Speaker from 1869 to 1875, was unusually skillful in turning his parliamentary powers to personal and party use. He asserted his authority to recognize or to refuse to recognize members who wished to speak, and his application of rules of order and his power to appoint committees for party interests were used for the advancement of his own political ends. Randall, who became Speaker of the Democratic Congress in 1876, declared that he considered the Speakership the "highest office within the reach of an American citizen." He systematically made changes in the rules of parliamentary procedure for the purpose of increasing the importance of his office. Carlisle, who was Speaker from 1883 to 1889, adopted the principle that the power of the Chair should be used, not to balance favors between majority and minority, nor even in obedience to the dictates of the majority, but in accordance with the Speaker's individual judgment. He sought to impose his will on the House and to be the real source of legislation.

Reed, who became Speaker in 1889, added new attributes to the Speaker's power. For purposes of obstruction, members had frequently refused to vote, thus preventing a quorum. Both parties, when in the minority, had followed this practice, and frequent attempts of the House to enforce the rule which required members to vote had failed. Speaker Reed was determined that obstruction of an organized minority should not prevent the majority from transacting business. He adopted the theory of "constructive presence," counted those who were present but did not vote in order to make a quorum, and refused to consider motions which were intended for the purpose of delay. The ablest writers on American constitutional law supported these decisions. Cushing said: "The right of a legislative assembly . . . to have the attendance of all its members . . . and to enforce it if necessary, is one of its most undoubted and important privileges."<sup>51</sup> Crocker stated that "it is the duty of every member not only to be present at its meetings, but also to vote on the questions that may arise."<sup>52</sup>

<sup>51</sup> *Parliamentary Law*, par. 264.

<sup>52</sup> *Principles of Procedure*, par. 114.

In a test case brought before the Supreme Court,<sup>53</sup> Judge Brewer justified the practice on the ground that the Constitution gives the House the power to make its own rules. The adoption by the Fifty-third Congress of a quorum rule, essentially similar to Reed's interpretation, practically ended the discussion of obstructive tactics in the House. In the Senate, however, the practice of "filibustering" and the discussion of methods to prevent it have continued to this day.<sup>54</sup>

Almost from the beginning of our national life, the Speaker assumed a position of political leadership in legislative affairs which was nowhere provided for in our constitutional system; and by the end of the century he had become second, in point of political influence, to the President alone. The power of this office did not develop, however, without opposition. Blaine was bitterly attacked for his assumption of arbitrary power. Reed was accused of "sitting in the chair with his feet on the neck of the Republican party," and was denounced as a tyrant, a despot, and a czar. In the first decade of the twentieth century, under the autocratic control of Speaker Cannon, the opposition became more active, especially with the growth of the Progressive movement in the Republican party. Finally, in 1910 a combination of Progressive Republicans and Democrats deprived the Speaker of his power to appoint standing committees, and deposed him from membership on the powerful Committee on Rules.<sup>55</sup> Since that date, the political leadership of the Speaker has been in part supplanted by that of a small group of party managers who hold important places in the committee system and who control the caucus of the majority party.<sup>56</sup>

By 1890 there were few clear-cut issues dividing Republicans from Democrats. The membership of each party was divided, especially on the currency question, but the organization of both parties was controlled by a group of politicians more interested in party success than in particular policies. Both parties were

<sup>53</sup> 144 *U.S. Reports*, 5-11.

<sup>54</sup> Note the speech of Vice-President Dawes on his inauguration in 1925.

<sup>55</sup> J. G. Cannon, "Powers of the Speaker," in *Century Magazine*, June, 1909; W. B. Hale, "The Speaker or the People," in *World's Work*, Apr., 1910; E. H. Abbott, "The Liberation of the House," in *Outlook*, Apr. 2, 1910; C. E. Atkinson, *The Committee on Rules and the Overthrow of Speaker Cannon* (1911).

<sup>56</sup> W. H. Haines, "The Congressional Caucus of Today," in *American Political Science Review*, IX, 696-706 (Nov., 1915); C. R. Atkinson and C. A. Beard, "The Syndication of the Speakership," in *Political Science Quarterly*, Sept., 1911.

essentially conservative and "reliable," and were responsive to the financial interests. Political reformers, the agricultural interests, and the class-conscious laborers had little to expect from either party, and insurgent members had no organized means of expression. None of the earlier independent movements, such as the Liberal Republicans, the Greenback party, and the United Labor party,<sup>57</sup> had been able to develop effective party organizations. Meantime the continued growth of the West and the extension of the frontier was bringing a Western program to the attention of public opinion. As Senator Ingalls said: "The seat of political power has at last been transferred from the circumference of this country to its center."<sup>58</sup> Overproduction and economic distress in the Western agricultural sections led to the formation of Farmers' Alliances which, like the earlier Granger movement, demanded agrarian relief. To this were added the demands of the silver miners, interested in a market for their product, and of the labor organizers, who demanded a radical change in the economic system. A new sectionalism<sup>59</sup> was arising, based on differing financial views and conditions. The agricultural sections of the West and the South were demanding a change in the financial policies of the government, and a new alignment of parties was being brought about by industrial, social, and political forces.

In 1892 the dissatisfied elements combined to form the People's Party, which aimed to "restore the government of the Republic to the hands of the plain people." It put forward a long list of grievances, offered a program of suggested reforms, and insisted especially on the free and unlimited coinage of silver. It accused the two major parties of a quarter-century of struggle for power and plunder, while the public suffered grievous wrongs. It was especially opposed to the influence of railroads in politics and to their high freight rates, to the speculation in Western lands, and to the high interest rates on farm mortgages. It claimed to be the true Jeffersonian Democracy and the Lincoln Republicanism, and

<sup>57</sup> This party, formed in 1888, was the successor of the Greenback party. It asserted that corruption existed in high places, that railroads and corporations controlled legislation and judicial decisions, and that the Senate had "become an open scandal, its membership being purchased by the rich in open defiance of the popular will." It appealed to the voters to forsake the old parties and combine to relieve the distress of the common people.

<sup>58</sup> Speech in the Senate, Jan. 14, 1891.

<sup>59</sup> F. E. Haynes, "The New Sectionalism," in *Quarterly Journal of Economics*, X, 269 (1896); F. J. Turner, "Is Sectionalism in America Dying Away?", in *American Journal of Sociology*, XVIII, 661 (1913).

wished to restore simplicity and economy in government. It favored extensive state activity in solving industrial difficulties. This party furnished an avenue of protest on a national scale, and in 1892 cast more than a million votes.

The Republican platform in 1892 reaffirmed "the American doctrine of protection," and took a middle ground on the currency issue, favoring bimetallism but with the maintenance of parity between the value of gold and silver dollars. The Democratic platform declared that the "federal government has no constitutional power to impose and collect tariff duties, except for the purposes of revenue only"; but Cleveland, the candidate of the party, in his acceptance speech took a moderate position on this issue. He said: "Though we oppose the theory that tariff laws may be passed having for their object the granting of discrimination and unfair governmental aid to private ventures, we urge no exterminating war against any American interests. . . . We contemplate a fair and careful distribution of necessary tariff burdens, rather than the precipitation of free trade." Both parties expressed opposition to trusts and combinations of capital. The fusion of Populists with Democrats in the West and with Republicans in the South worked to the disadvantage of the Republicans, and the Democratic party secured control of the Presidency and of both houses of Congress. For the first time since the Civil War it was placed in a position of responsible leadership.

The Democratic party, however, was hopelessly divided on the money question, and was not able to carry out its party promises. Cleveland was recognized as a leader by public opinion in the country at large, but his leadership was repudiated in the councils of his own party.<sup>60</sup> Urged by the President to revise the tariff, the Democrats in the House passed a bill which was so changed in the Senate, where influential Democratic leaders were avowed protectionists, that Cleveland refused to sign the measure, stigmatizing it as a product of "party perfidy and party dishonor." Influenced by the decline of the gold reserve and by a severe financial panic, Cleveland urged the repeal of the Silver Purchase Act of 1890. While this was accomplished,<sup>61</sup> largely by the aid of Republican votes, the resultant debate, which touched upon practically every aspect of the silver question,<sup>62</sup> forced the

<sup>60</sup> Woodrow Wilson, "Mr. Cleveland as President," in *Atlantic Monthly*, LXXIX, No. 3 (March, 1897).

<sup>61</sup> *U.S. Statutes at Large*, XXVIII, 4-5.

<sup>62</sup> *House and Senate Journals*, 53rd Congress, 1st Sess.



issue upon the Democratic party and made compromise no longer possible. It led to a vigorous fight for control of the party organization. As W. J. Bryan, one of the leaders of the insurgents in Congress said: "To-day the Democratic party stands between two great forces each inviting its support. On one side stand the corporate interests of the nation, its moneyed institutions, its aggregations of wealth and capital, imperious, arrogant, compassionless. They demand special legislation, favors, privileges, immunities. . . . On the other hand stands the unnumbered throng which gave a name to the Democratic party and for which it has assumed to speak."<sup>63</sup> From this time the free silver and labor elements<sup>64</sup> in the party made vigorous efforts to secure control of the party policy and to speak in the party name.

In the national convention of the Democratic party in 1896 the silver delegates secured control. The debate over the monetary issue was long and bitter, and the final argument in favor of free silver, given by W. J. Bryan,<sup>65</sup> marked him as the leader of the new crusade and finally won him the nomination for the Presidency. The platform of the party made the free coinage of silver the paramount issue, but also insisted upon tariff revision, and denounced "arbitrary interference by federal authorities in local affairs." It attacked the decision<sup>66</sup> of the Supreme Court declaring a federal income tax unconstitutional, and insisted that it was the duty of Congress to use "all the constitutional power which remains after that decision, or which may come from its reversal by the court as it may hereafter be constituted, so that the burden of taxation may be equally and impartially laid, to the end that wealth may bear its due proportion of the expenses of the government."

The attitude of the new leaders of the party was one of bitter protest against the old political leaders and methods, and represented a deep-seated discontent concerning the economic situation. They aimed to free the masses from the control of a financial oligarchy. They believed that their platform marked a new era in politics, and appealed to the aid of all citizens who were in sympathy with their program. The new social democracy looked upon

<sup>63</sup> Speech in the House, Aug. 16, 1893.

<sup>64</sup> The use of federal troops by Cleveland to put down the Pullman strike in 1894 alienated the laboring class, and led to the charge that he favored a powerful federal government in opposition to the traditional States' rights doctrine of his party.

<sup>65</sup> See his *The First Battle* (1896).

<sup>66</sup> *Pollock, v. Farmers Loan and Trust Company*, 157 U.S., 429 (1895).

government, not merely as a means of repression, as in Jefferson's day, but as an agency of a democratic state to promote popular welfare. A century earlier the business interests had demanded strong government and the masses had opposed it; by the end of the nineteenth century, the masses were urging governmental control, and the business interests were insisting upon laissez-faire. The Democrats adopted many of the policies of the Populists, who gradually fused with the new Democracy and disappeared as a separate party. The conservative members of the party denounced the new policies as extreme and revolutionary, made a half-hearted effort to organize a National Democratic party, and in many cases gave their support to the Republican candidate. This group feared the socialistic tendencies of their party, opposed further enlargement of governmental control over transportation and commerce, and deplored the attack on the Supreme Court. They preferred the more conservative party, which would be more disposed to protect business interests.

The division in the Republican party was less marked. A group of Western leaders favored free silver, but the majority supported the gold standard. They decided to stress the tariff issue, and leave the money question open to compromise. The nomination of McKinley, through the efforts of Marcus Hanna,<sup>67</sup> represented this point of view. To McKinley the tariff was a sacred institution. "Enveloped in it," he said, "are my country's highest development and greatest prosperity." "It is our duty to protect as sacredly the labor and industry of the United States as we would protect her honor from taint or her territory from invasion."<sup>68</sup> The Republican organization looked askance at political reformers, aimed at party unity, and was determined to protect property interests. Strong financial support was secured for its candidate, leading to the accusation that the campaign was one between the capitalist group and the masses. In his letter of acceptance McKinley deprecated the attempt to "array class against class." The campaign was bitterly waged on a clear-cut issue upon which no definite decision had previously been possible. Party lines, which had previously cut horizontally through the social classes of the country, seemed to be clearly drawn between the rich and powerful on the one hand and the struggling proletariat, with leanings toward so-

<sup>67</sup> H. Croly, *Marcus A. Hanna* (1912).

<sup>68</sup> For McKinley's political ideas, see his *Speeches and Addresses from Election to Congress to the Present Time* (1893); *Speeches and Addresses, 1897-1900* (1900).

cialism or anarchy, on the other. Bryan's candidacy aroused enthusiasm among the radical elements of the country and struck terror to the hearts of the conservative business interests. The press in the metropolitan centers attacked Bryan with unprecedented vindictiveness. Bryan secured the vote of the sparsely settled mining and agricultural sections; McKinley received his chief support in the cities and in the densely populated areas. The success of the Republican party, which remained in power for over a decade, marked the end of the period of political confusion and revolt. It also marked the beginning of a more effective political organization,<sup>69</sup> of an increased power in the hands of the political "boss," and of a closer connection between organized business and the political machinery of the country.

The last quarter of the nineteenth century was a period of marked intellectual progress in the United States. A new literature, distinctively American, appeared, depicting the virile life of the various sections of the country.<sup>70</sup> The newspapers abandoned their earlier ponderous literary style, and began to appeal to the masses and to arouse public opinion on questions of social and political reform. While, in general, the press followed lines of party cleavage, the leaven of independent thought was at work. Weekly journals, such as the *Independent*, *Harper's Weekly*, and the *Nation*, gave a stimulus to this tendency. E. L. Godkin, of the *Nation*, set a new standard of intelligent criticism of public affairs, and T. Nast, in *Harper's Weekly*, influenced political thought through his cartoons and caricatures, contributing the popular figures of the Republican elephant, the Democratic donkey, and the Tammany tiger.

### 3. FOREIGN POLICY, 1877-1897

The period between 1877 and 1897 marked the lowest ebb in the conduct of American diplomacy. Administrations were of short duration, and little attention was paid to consistency of policy. Men of mediocre ability represented the United States in foreign capitals, and diplomacy was at the mercy of politics. The laying

<sup>69</sup> As early as 1897, R. M. LaFollette, in an address entitled "The Menace of the Political Machine," delivered at the University of Chicago, argued for the direct primary in place of the party caucus and convention, so that "every citizen will share equally," in the work of the party.

<sup>70</sup> For example, the writings of S. L. Clemens ("Mark Twain"), Bret Harte, Edward Eggleston, George W. Cable, Walt Whitman, T. N. Page, F. Hopkinson Smith, and others.

of the Atlantic cable in 1866 changed the nature of diplomatic intercourse, concentrating business in the home department and reducing the freedom and responsibility of foreign ministers. Men of ability found the position of foreign representative less attractive, and the offices were filled with men of wealth who were eager for social advancement. On the other hand, with the growth of our foreign trade, the consular service became more important, was given more attention by the government, and in spite of the failure to place it on a civil service basis, was fairly efficient in promoting American business.

In spite of our policy of avoiding entangling alliances, the United States entered into a number of agreements with foreign countries for the purpose of improving the means of intercourse and trade. Extradition treaties were made with several countries; and the United States entered into international arrangements for the protection of patents and copyrights, for the safeguarding of submarine cables, for the publication of customs tariffs, and for the suppression of the African slave trade. Some sentiment in America opposed the extension of international communication, on the ground that it might corrupt our manners and destroy the splendid isolation which our ocean barriers gave us.

A marked feeling of hostility to Great Britain was characteristic of the period. The diversion of "twisting the lion's tail" was popular in the American press. Controversy with Canada over the Atlantic fisheries continued, the Americans contending for inshore and harbor privileges in Canadian waters.<sup>71</sup> On the west coast we took a different attitude. For the protection of Alaskan seals, the United States put forward the claim that Bering Sea was under the territorial jurisdiction of the United States.<sup>72</sup> This policy was opposed to the free navigation of rivers and bays for which the United States had previously contended, and was contrary to the general current of world opinion.<sup>73</sup> Great Britain insisted on the three-mile limit as the extent of American control. In 1892 an arbitration treaty was signed, authorizing a joint commission to

<sup>71</sup> C. B. Elliott, *The United States and the Northeastern Fisheries* (1887).

<sup>72</sup> Resolution of Congress, Mar., 1889.

<sup>73</sup> The question of the right of a state to exercise territorial jurisdiction over the high seas had been an issue since the controversy between John Selden, in his *Mare Clausum*, and Hugo Grotius, in his *Mare Liberum*, in the early seventeenth century. The principle that the oceans were not subject to the control of any single state had been generally accepted. The United States had protested against the Russian czar's ukase of 1821 asserting territorial control over Bering Sea.

take up the whole question, historical, legal, and economic. The American commissioners gave up the claim that Bering Sea was by nature a *mare clausum*, but based their arguments on earlier treaties with Russia and on the right of the United States to protect Alaskan seals when straying from home beyond the three-mile limit. The decision went against the United States, but some protective regulations were adopted.<sup>74</sup> These were not binding on other nations, hence little was accomplished for the protection of the seal herds, and the United States had sacrificed the cherished principle of the freedom of the seas in the process.

Interest in an isthmian canal, long dormant since the Clayton-Bulwer treaty of 1850,<sup>75</sup> was revived when a French company secured a concession from Colombia to build an interoceanic canal across Panama, and when it suggested a joint international guarantee of neutrality. In his message of March 8, 1880, President Hayes stated that "the policy of this country is a canal under American control. The United States cannot consent to the surrender of this control to any European power or to any combination of European powers. . . . An interoceanic canal across the American isthmus will essentially change the geographical relations between the Atlantic and Pacific coasts of the United States. . . . It would be the great ocean thoroughfare between our Atlantic and Pacific shores, and virtually a part of the coast line of the United States. . . . No other power would under similar circumstances fail to assert a rightful control over a work so closely and vitally affecting its interest and welfare."<sup>76</sup>

While this had not been the previous policy of the United States, which had generally asserted the principle of freedom of use of international waters under international guarantee, it was indorsed by Congress under the Monroe Doctrine and eagerly supported by Secretary of State Blaine. In a message to our representatives in Europe he stated that we should object to any concert of European powers for guaranteeing the canal, that our guarantee needed no "reinforcement, or accession, or assent from any other power," and that in case Colombia or the United States were engaged in war the permission of hostile military forces to use the canal was "no more admissible than on the railroad lines joining the Atlantic and Pacific shores of the United States."<sup>77</sup>

<sup>74</sup>J. B. Moore, *International Arbitrations* (1898), I, Ch. XVII.

<sup>75</sup>See above, Chapter X, Sec. 2.

<sup>76</sup>J. D. Richardson, *Messages and Papers of the Presidents*, VII, 585.

<sup>77</sup>*Foreign Relations of the United States* (1881), pp. 537-540.

This attitude was in direct opposition to the Clayton-Bulwer treaty, which Blaine attacked. He argued that the treaty was more than thirty years old, that it was intended to facilitate the building of a canal that had never materialized, that conditions had changed with the development of the Pacific Coast of the United States, and that the treaty was not consistent with "our right and long established claim to priority on the American continent." He insisted that the French plans had changed the situation, and that the United States had the right to fortify the canal and, jointly with Colombia, to control it.<sup>78</sup> His successor, Frelinghuysen, added that "a protectorate of European nations" would be a violation of the Monroe Doctrine. British statesmen replied that the Clayton-Bulwer treaty was not a special contract but a general statement of policy, that the Monroe Doctrine had not been invoked to prevent its creation, and that the Pacific Coast of Canada had developed as well as that of the United States. They argued that the building of a transcontinental railway in the United States had actually diminished our special interest in a canal.<sup>79</sup>

Meanwhile proposals to construct a rival canal across Nicaragua were given serious consideration, and a treaty was negotiated with that country in 1884 by which the United States was given the right to construct a canal under its own control. The accession of the Democratic party under Cleveland in 1885 changed the policy of the United States. The treaty with Nicaragua was withdrawn and the traditional policy of a canal under international guarantee was revived. Cleveland stated that such a canal "must be for the world's benefit, a trust for mankind, to be removed from the chance of domination by any single power, nor become a point of invitation for hostilities or a prize for warlike ambitions."<sup>80</sup> With the failure of the French company to finish the canal, agitation died down. The Clayton-Bulwer treaty survived, and the policy of the United States remained in doubt until after the war with Spain. These controversies, however, kept alive the traditional American attitude of hostility to England.

In our relations with the Latin American countries during this period the Monroe Doctrine was further extended and became more aggressive, with resultant bad feeling toward the United States

<sup>78</sup> *Foreign Relations of the United States* (1881), pp. 554-559.

<sup>79</sup> *British and Foreign State Papers*, LXXIII, 873.

<sup>80</sup> J. D. Richardson, *Messages and Papers of the Presidents*, VIII, 324.



in those countries. Under Secretary of State Blaine the doctrine was developed that the United States should act as sole mediator in the disputes among the Latin American powers, and between them and the European powers. Previously the United States had joined with the European powers in mediation, and had interposed no objection to the representatives of France and Great Britain acting alone in that capacity. In a dispute between France and Venezuela over claims of the former against the latter, Blaine opposed French intervention, and threatened that, if the claims were not paid, the United States would seize the customhouses and collect the money. This threat foreshadowed a course of action later followed by the United States. In the war between Chile and Peru in 1881, the United States offered mediation, protested against European intervention, and threatened Chile in case she made excessive demands as the result of her victory.<sup>81</sup> When a civil war broke out in Chile in 1891, the United States adopted a high-handed and blustering policy of intervention that almost resulted in war, and that further alienated the South American countries.

Blaine hoped to make the United States the permanent arbiter of a Pan-American union.<sup>82</sup> A Pan-American Congress, called by Congress in 1888, was scoffed at by Europe and received with no particular enthusiasm by Latin America. The president of Chile informed his Congress that he had accepted the invitation "out of polite regard for a friendly government"; and Señor Romero, the Mexican minister at Washington, said that there was a general fear that its purpose was "to secure the political and commercial ascendancy of the United States on this continent."<sup>83</sup> The most important achievement of the conference was the formation of the Bureau of the American Republics, located at Washington. This bureau, charged with the collection of information mutually advantageous, has remained, under the name of the Pan-American Union, as a permanent and valuable bond of friendship.

Richard Olney, who became Secretary of State under Cleveland, continued to apply the Monroe Doctrine vigorously. In the dispute between Venezuela and Great Britain (1895) over the boundary between the former and British Guiana, the United

<sup>81</sup> *House Executive Docs.*, 47th Congress, 1st sess., I, No. 1 (1882).

<sup>82</sup> See his *The Foreign Policy of the Garfield Administration* (1882). See also A. C. Wilgus, "James G. Blaine and the Pan-American Movement," in *Hispanic American Historical Review*, V, 662 (1922).

<sup>83</sup> M. Romero, "The Pan-American Conference," in *North American Review*, CLI, 354-367, 407-421 (1890).

States insisted that the boundaries of foreign colonies in America were fixed, and that disputes must be settled by judicial process. Any attempt by Great Britain to advance her frontier would be a violation of the Monroe Doctrine. President Cleveland, in his annual message of December, 1894, stated that an early settlement of the dispute was desirable "in the line of our established policy to remove from this hemisphere all causes of difference with powers beyond the sea."<sup>84</sup> Olney proclaimed the ultimate extinction of European colonial possessions in America, stating that "distance and three thousand miles of intervening ocean make any permanent political union between an European and an American state unnatural and inexpedient." He pushed the Monroe Doctrine to its extreme application, announcing: "To-day the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition."<sup>85</sup> Olney based this doctrine frankly on the power of the United States, saying that "its infinite resources combined with its isolated position render it master of the situation and practically invulnerable as against any or all other powers."<sup>86</sup> This was a very different theory from that originally put forward by Monroe, when isolation in world politics was desired.

Both the actions and the doctrines of American statesmen during this period were provocative to Europe<sup>87</sup> and created suspicion in Latin America. The statement that European colonies in America were temporary antagonized the former; the statement that an Isthmian canal would be part of our coast line, and that our will was law in this hemisphere, threatened the latter. In the light of such pronouncements, little attention was paid to President Cleveland when he said that the Monroe Doctrine found "its recognition in those principles of international law which are based upon the theory that every nation shall have its rights protected

<sup>84</sup> Richardson, *Messages and Papers of the Presidents*, IX, 526.

<sup>85</sup> *House Docs.*, 54th Congress, 1st sess., I, No. 1, 545-562 (1896).

<sup>86</sup> See also R. Olney, "International Isolation of the United States," in *Atlantic Monthly*, LXXXI, 577-588 (1898). For a British criticism of Olney's doctrine, see the *Nineteenth Century*, Dec., 1896.

<sup>87</sup> The London *Times* of Nov. 14, 1896, stated that Great Britain had virtually accepted the "principle that in respect of the South American Republics the United States may not only intervene in disputes, but may entirely supersede the original disputant and assume exclusive control of the negotiations." A writer in the *Nineteenth Century* magazine (Dec., 1896) stated that "the best informed French and German journalists . . . point out that it involves possibilities of considerable gravity, not merely to England and the United States, but also to the civilized world in general."

and its just claims enforced,"<sup>88</sup> or to Secretary Olney's extremely erroneous statement that "the states of America, South as well as North, by geographical proximity, by natural sympathy, by similarity of governmental constitutions, are friends and allies, commercially and politically, of the United States." The Latin-American states drew steadily closer to Europe.

Meantime, without any definite governmental policy, the United States was extending its influence in the Pacific, mainly through the efforts of missionaries.<sup>89</sup> With Japan and China our relations were friendly and our commercial interests were expanded. Nevertheless, the opposition to Chinese laborers on the Pacific coast became an element in national politics, and efforts were made to provide for their exclusion. A treaty with China in 1882 authorized the United States to limit or suspend the immigration of Chinese coolies, and an Act restricting Chinese immigration for ten years was passed by Congress.<sup>90</sup> To prevent evasion of this law, more vigorous Acts were passed in 1888 and 1892;<sup>91</sup> and in 1894 a new treaty with China prohibited the immigration of Chinese laborers for ten years from that date.

From time to time American control was extended over a number of small islands in the Pacific. Most of these were held temporarily while guano was being extracted by American citizens, but Midway Island, occupied by the navy in 1867, remained permanently under American sovereignty. In the Samoan group, England, Germany, and the United States had commercial interests. A treaty of 1878 gave to the United States a naval base at Pagopago and set up a sort of American protectorate, the United States agreeing to use its good offices if disputes arose between the Samoan government and any other country. The attempt of the German consul to establish German control over the islands led to a controversy which was finally settled by recognizing the independence of Samoa under a joint protectorate of the United States, Germany, and Great Britain. Believing in the right of local self-government, the United States was not willing at that time to establish a colonial system in the Pacific, but it did depart

<sup>88</sup> For Cleveland's message applying the Monroe Doctrine to the Venezuela question, see *Senate Journal*, 54th Congress, 1st sess., 55-56 (1895).

<sup>89</sup> J. W. Foster, *American Diplomacy in the Orient* (1903); J. M. Callahan, "American Relations in the Pacific and the Far East, 1784-1900," in *Johns Hopkins Univ. Studies in Hist. and Pol. Science*, XIX, Nos. 1-3 (1901); A. T. Mahan, *The Problem of Asia and Its Effect upon International Policies* (1900).

<sup>90</sup> *U.S. Statutes at Large*, XXII, 58-61.

<sup>91</sup> *Ibid.*, XXV, 476-479.

somewhat from its traditional policy of isolation by the joint agreement with two European powers.

In the Hawaiian Islands the United States from the beginning possessed a predominant interest. American missionaries and commercial agents were active in the islands, and as early as 1842 Webster had stated that foreign powers should not be allowed to interfere in the government of Hawaii. This view was repeated several times later when England and France attempted to exercise an influence in the islands; and it was generally held by American statesmen that Hawaii was included in the American continent and was under the protection of the Monroe Doctrine. Secretaries of State Marcy and Seward were eager to annex the islands to the United States. In 1873, Secretary of State Fish said: "There seems to be a strong desire on the part of many persons in the islands, representing large interests and great wealth, to become annexed to the United States. And while there are many and influential persons in this country who question the policy of any insular acquisitions, perhaps even any extension of territorial limits, there are also those of influence and of wise foresight who see a future that must extend the jurisdiction and the limits of this nation, and that will require a resting spot in the mid-ocean, between the Pacific Coast and the vast domains of Asia, which are now opening to commerce and Christian civilization." At that time, however, the feeling against expansion was strong.

In 1881 Blaine wrote: "Throughout the continent, north and south, wherever a foothold is found for American enterprise, it is quickly occupied, and this spirit of adventure, which seeks its outlet in the mines of South America and the railroads of Mexico, would not be slow to avail itself of openings of assured and profitable enterprise even in mid-ocean." With the marriage of the native queen to a Scotchman, and the education of the crown princess in England, American interest was revived. J. L. Stevens, who was the American minister to the islands, wrote in 1892 that "a new departure by the United States as to Hawaii is rapidly becoming a necessity, that protectorate is impracticable, and that annexation must be the future remedy or else Great Britain will be furnished with circumstances and opportunity to get a hold on these islands which will cause future serious embarrassment to the United States." A revolution in the islands (1893), led by the American element, deposed the queen, established a government on the American model, and applied for annexation to the United

States.<sup>92</sup> President Cleveland opposed this policy and requested the restoration of the Queen, but the new government became permanent and awaited a return to Republican control in the United States and a more favorable opportunity for annexation.<sup>93</sup> American interests in the Pacific were becoming so extensive that they were sure to demand diplomatic action. The tradition of isolation was rapidly becoming an impossibility. The United States had interests in all parts of the earth, and her growth in population and resources had made her one of the great world powers. The war with Spain in 1898 marked the beginning of a new epoch in American foreign policy.

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## 450 HISTORY OF AMERICAN POLITICAL THOUGHT

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## CHAPTER XIV

### POLITICAL ISSUES AND DEVELOPMENT IN THE TWENTIETH CENTURY

#### 1. POLITICAL ISSUES, 1897-1925

With the settlement by the Civil War of the momentous problem growing out of two irreconcilable economic systems, attention was gradually shifted to a new issue—that of a more equitable distribution of the wealth created by our industrial development. Laborers and farmers, organized into various associations and independent parties, protested against the railroads, the corporations, and the money trust. At first labor took the lead in organizing the discontented elements. After 1889 the agrarian group was the dominant factor. The Middle West, which was rapidly becoming the center of American political influence, was permeated with Populist doctrines.<sup>1</sup> Conservative leaders in both parties hoped that the election of McKinley would bring to an end the party confusion of the previous twenty years and would prevent the spread of radical doctrines. Determined, though unsuccessful, efforts<sup>2</sup> were made to reorganize the Democratic party, and to break its “unholy alliance with the Populists.” The Republican party felt that it had received a popular mandate to protect American industry; and in the Dingley tariff bill, passed in 1897, it enacted “the most thoroughgoing protective measure in American history.” The Republican party was definitely identified with the business interests of the nation.

Meantime, the Spanish War and the acquisition of colonial dependencies raised a new issue, that of imperialism. An Anti-Imperialist League was formed in 1898, and the Democratic state platforms and the Democratic press opposed expansion. Ex-President Cleveland<sup>3</sup> declared himself opposed to American imperialism, and W. J. Bryan called for a campaign against colonialism.

<sup>1</sup> R. F. Hoxie, “The Rising Tide of Socialism,” in *Journal of Political Economy*, XIX, 609 (1911).

<sup>2</sup> Led by Senator Hill.

<sup>3</sup> In a letter to the Anti-Imperialist League.

Some prominent Republican leaders<sup>4</sup> opposed the acquisition of the Philippines, and the new issue threatened to break party alignments. The unusual prosperity of the nation turned attention somewhat from domestic to foreign issues. The Republican convention in 1900 emphasized the record of its party in office, renominated McKinley, and selected for Vice-President Theodore Roosevelt. Neither Hanna nor McKinley desired the nomination of Roosevelt, but there was a strong popular demand for him in the Western states, and Senator Platt was anxious to get him out of state politics in New York. As Platt put it, he wished Roosevelt to "take the veil."<sup>5</sup>

The Democratic convention, led by Bryan, attacked both the domestic and the foreign policy of the administration. It demanded free silver and control of the trusts. "The burning issue of imperialism" was declared the paramount question, and the "war of aggression" in the Philippines was blamed on the "greedy commercialism" of the United States. The platform asserted that "no nation can long endure half republic and half empire." It condemned the entry of the United States into "so-called world politics, including the diplomacy of Europe and the intrigue and land-grabbing in Asia." The trusts were denounced severely. The Democratic platform pledged the party to "increasing warfare in nation, state, and city against private monopoly in every form." It demanded the direct election of United States Senators, and "direct legislation wherever practicable." It opposed the conservatism of the courts and the process of "government by injunction." In his acceptance speech, Bryan devoted himself briefly to the issue of imperialism, demanding for the Philippines American protection and prospective independence. Nevertheless, the Democratic party was not radical enough for many discontented voters, and Bryan's vote was smaller than it had been in 1896. A considerable element of Populist and Labor voters refused to follow him; and the new Social Democratic party, putting forward Eugene Debs as its first candidate, polled almost 100,000 votes in thirty-two states. The Republican party, successful in the campaign, was united and well organized. It was definitely committed to business expansion. In the Democratic party opinion was di-

<sup>4</sup>Such as Speaker Reed and Senator Hoar. See *Congressional Record*, 56th Congress, 1st sess., XXXIII, 4303-4305 (1900).

<sup>5</sup>H. H. Kohlsaatt, *From McKinley to Harding* (1923). T. C. Platt, *Autobiography* (1910).

vided. Eastern Democrats felt that the defeat of Bryan indicated the necessity of new leadership and a more conservative policy. Western Democrats pointed out that the hope of democracy rested in greater radicalism, in the adoption of more socialistic doctrines. Its only hope of success, they argued, was in combining the elements of protest, and they urged government ownership of monopolies as the next policy of reform.

In 1900 the United States enjoyed unprecedented prosperity at home and prestige abroad. McKinley was contemplating a more liberal policy of trust regulation and of enlarged commerce through reciprocity agreements. He had changed somewhat his former views on the tariff, and in his last great speech<sup>6</sup> he emphasized coöperation with the powers of the world, and a modified tariff policy that would encourage the expansion of our trade and commerce. Industry was flourishing, and McKinley believed that the period of exclusion was past. "If perchance some of our tariffs are no longer needed for revenue or to encourage and foster our industries at home, why should they not be employed to extend and promote our markets abroad?" The assassination of McKinley on the next day, when the press both in this country and abroad was filled with praise of his speech, brought Roosevelt into the Presidency. He stated that "it shall be my intention and endeavor to continue, absolutely unbroken, the policy of President McKinley, for the peace and prosperity and honor of our beloved country."

The older statesmen of the Republican party were apprehensive lest Roosevelt, young and enthusiastic, should disturb the stability of the financial and industrial organization which the "safe" administration of McKinley had fostered. The conditions of the time gave grounds for apprehension. A reaction was evident against the prosperity of the period. Serious strikes were threatened, labor was restless, and Populism in the West was again vigorous. LaFollette, elected Governor of Wisconsin in 1900, was spreading the "Wisconsin idea"<sup>7</sup> by his struggle against the vested interests in that state and by demands for direct democracy. Roosevelt was much impressed by his doctrines, and insisted that the American people must get a "square deal."

The period from 1902 to 1908 was the "muckraking era," when

<sup>6</sup>At the Pan-American Exposition in Buffalo, Sept. 5, 1901.

<sup>7</sup>C. McCarthy, *The Wisconsin Idea* (1912); W. A. White, *The Old Order Changeth* (1913); R. M. LaFollette, *Autobiography* (1913).

numerous writers,<sup>8</sup> in sensational articles, were attempting to arouse public opinion from its lethargy on questions of social, political, and economic reform. Among the most important causes of the social and political discontent were the ending of free land, the disappearance of our natural resources, the increase of population, the relative decrease in the output of gold, the increased production of silver, the rise of trusts and monopolies, the growth of factories and factory life, the protective tariff, the power of organized wealth in politics, the oppressive practices of the railroads, immigration, and the rise of labor unions. Bryan gave chief attention to gold, silver, and currency; Roosevelt was interested in conservation, and in the connection between politics and business.

Moreover, Roosevelt had a different conception of executive authority from that of McKinley. The latter, trained in Congress and familiar with its methods, had been conciliatory and coöperative with the legislative branch. He had not made his leadership conspicuous or urged new policies. Roosevelt regarded government as an instrument which wise and zealous leaders might use for the purpose of furthering justice. He believed, with Andrew Jackson, that the President represented the whole people, should exercise large discretionary powers, and should direct the process of legislation. He wrote:<sup>9</sup> "I did not usurp power, but I did greatly broaden the use of executive power. In other words, I acted for the common well-being of all our people, whenever and in whatever manner was necessary, unless prevented by direct constitutional or legislative prohibition." He had little interest in abstract constitutional theory, and was more interested in practical results than in legal niceties.<sup>10</sup>

In the early part of his career he was most interested in civil service reform and honest government; in the later period, he emphasized social and industrial legislation, equal suffrage, the initiative and referendum, and the recall of judicial decisions. He advo-

<sup>8</sup> I. M. Tarbell, *History of the Standard Oil Company* (1902); T. W. Lawson, "Frenzied Finance," in *Everybody's* (1904-1905); U. Sinclair, *The Jungle* (1905); R. S. Baker, "The Railroads on Trial," in *McClure's* (1905-1906); D. G. Phillips, "The Treason of the Senate," in *Cosmopolitan* (1906-1907).

<sup>9</sup> *Autobiography* (1913), 389.

<sup>10</sup> For the political theory of Roosevelt, see his *Addresses and Presidential Messages* (1902-1904); *American Ideals and Other Essays, Social and Political* (1917); *Fear God and Take Your Own Part* (1916); *The Foes of Our Own Household* (1917); *The New Nationalism* (1910); *Outlook Editorials* (1919); *Progressive Principles* (1913); *The Strenuous Life* (1905); *Autobiography* (1913); *National Strength and International Duty* (1917).

cated military preparedness and believed that an ardent nationalism was an element in democratic progress. He was chiefly influential as a preacher of civic duty, arousing the political consciousness of the American people, and stimulating public interest in political matters. Roosevelt revived the Hamiltonian ideals of constructive national legislation, but with a difference. Hamilton attempted to make the national organization a bulwark against the rising tide of democracy; Roosevelt aimed to use the national authority to make the country more completely democratic. The Democratic party, while interested in social and democratic reform, could not extend national responsibility without being faithless to its states' rights creed. The Republican party, with its tradition of national responsibility, was in danger, like the earlier Whigs, of using its power for the benefit of special interests. Roosevelt wished to make the Republican party the agency for national, democratic reform.<sup>11</sup>

In his first message to Congress,<sup>12</sup> Roosevelt outlined an elaborate program and stated his opinions on many questions of public concern. He gave particular attention to the "trusts," disavowing any desire to disturb business by "crude and ill-considered legislation," but stating that there was a widespread conviction that certain features of the great corporations were harmful, and that they should be "not prohibited, but supervised and within reasonable limits controlled." He advocated full publicity and government regulation. This policy was soon put into practice in the suit against the Northern Securities Company for violation of the Sherman Anti-Trust Law, and in the five-to-four decision of the Supreme Court<sup>13</sup> dissolving that trust. The Sherman law ceased to be a dead letter; and Roosevelt, in a series of speeches, defended his policy of placing the trusts "under the real and not the nominal control of some sovereignty to which they shall owe allegiance." He made bitter attacks upon "predatory wealth" and enjoyed popularity as the "trust buster." Following his suggestion a Department of Commerce and Labor was created (1903), the Elkins Act (1903) extended and strengthened the federal control of interstate commerce, and successful suits against other great cor-

<sup>11</sup> H. Croly, *The Promise of American Life* (1909); *Progressive Democracy* (1914); W. Weyl, *The New Democracy* (1912).

<sup>12</sup> Dec. 3, 1901.

<sup>13</sup> *Northern Securities Co. v. United States*, 193 U.S., 197 (1904).

porations<sup>14</sup> continued the policy of federal control. His successful, though somewhat high-handed, intervention to bring the coal strike of 1902 to an end, and his active interest in the conservation of our natural resources represented the same policy of using governmental authority for purposes of public welfare. Like James Wilson, Roosevelt desired the foundation of all authority to be in the people, but he desired that authority to be strong.

In his foreign policy the same vigorous conception of executive power was manifested. The frustration of German designs in Venezuela, the exercise of an "international police power" to preserve order in the Caribbean region, the "taking" of the Panama Canal zone, the offer of good offices to end the Russo-Japanese War, and the sending of a fleet of American battleships to visit Japanese waters when feeling in that country was bitter against the United States were typical of his determination to increase the prestige of the United States in world politics. "Speak softly and carry a big stick" was his picturesque phrasing of his policy. Roosevelt recognized the nationalizing forces that resulted from our imperialism, as well as those that had their origin in changing industrial conditions.

The campaign of 1904 was marked by a struggle for leadership in both parties. Roosevelt's strenuous policies had brought him great popularity, but had also made bitter political enemies. Wall Street was apprehensive over his fight against the trusts. Capitalists complained of his "meddlesome" policy in labor disputes. The party bosses, led by Hanna, resented his independent attitude. His imperialistic policies were bitterly attacked. On the other hand, many of the former followers of Bryan flocked to Roosevelt's support because of his attack on the corporations and his action in the coal strike. At first, the "interests" and the "bosses" determined to oppose Roosevelt's desire for an election to the Presidency in his own right, but his personal strength in the country at large, and the death of Hanna (1904) shattered the plans of the opposition, and Roosevelt was nominated by acclamation. In the interest of party success unity was accomplished. However, the old conservative party machine and the state bosses retained control over a considerable section of the party, and awaited the retirement of Roosevelt in order to place a "safe" man in office.

The progressive policies of Roosevelt intensified the contest

<sup>14</sup>For example, *Swift and Company v. United States*, 196 U.S., 375 (1905).



in the Democratic party between the radical wing, led by Bryan, and the conservative element, which worked to "reorganize" the party. Bryan, like Roosevelt, realized the prime importance of the "trust" problem, and contrasted the Republican policy of "preventing evils in trust organization and practice" with the Democratic policy of "destroying private monopoly."<sup>15</sup> The conservative element of the party was inclined to abandon the program of protest and to emphasize the policy of "guardianship of the Constitution." It attacked the arbitrary and autocratic actions of Roosevelt as contrary to the principles of American government. Bryan bitterly opposed this attitude, and favored a federal income tax, direct election of Senators, direct legislation, and the extermination of the trusts. The leading radical candidate was W. R. Hearst, an advocate of extensive social and economic reform, who was even less trusted by the conservatives than Bryan. To prevent his nomination, Judge Parker, a conservative, "gold standard" Democrat was nominated, and the platform combined Bryan's planks attacking the trusts with the Eastern Democrats' insistence on "constitutional government." The interesting spectacle was presented of a radical Republican successor to McKinley opposed to a conservative Democratic successor to Bryan.

The Democratic platform was silent on the issue of free silver, Judge Parker stating that "it is not regarded by us as a possible issue in this campaign." While Bryan gave unwilling support to the ticket, he soon invited attention to new and more radical issues, favoring government ownership and operation of the railroads, and the election of federal judges for fixed terms. He stated that "the rapid growth of the Socialist party is conclusive proof that the Democratic party has been too conservative to satisfy the reform element of the country," and many predicted that the Democratic party had outlived its usefulness. Hopelessly divided, the Democrats cast fewer votes than in 1900. Numerous followers of Bryan in the West voted for Roosevelt, who received a larger majority than any previous candidate; and the Socialist vote increased fourfold. This result strengthened the leadership of Bryan in the Democratic party, and made it clear that if the party was to make progress it must appeal more strongly to the vote of protest. Bryan, in commenting upon the selection, invited all Democrats to unite in

<sup>15</sup> See Bryan's newspaper, *The Commoner*. Bryan's political ideas may be found also in his *The First Battle* (1897); *The Second Battle* (1900); *The Tale of Two Conventions* (1912); *World Peace* (1917); *Speeches* (1911-1913); *Memoirs* (1925).

“making the Democratic party a positive, aggressive, and progressive reform organization.” Roosevelt, after his election, said: “Under no circumstances will I be a candidate for or accept another nomination.”

After Roosevelt's triumphant election, he was more determined than ever to carry out the policies he had previously begun. In his first message to the new Congress he repeated his views on the control of great corporations, and his belief that the selfish interests of both capital and labor should be subordinated to public welfare. While his opponents accused him of “socialism,” Roosevelt had no sympathy with collective ownership. He believed in the private ownership of the means of production and in the value of large industrial units. He had no objection to “good trusts.” But he insisted that the government, as the guardian of the interests of the public, should supervise and regulate all groups and associations that affected public welfare, and that both capitalists and laborers should have a wholesome respect for the law. The conservative members of the old guard in his party and the leaders of high finance placed every obstacle in the way of his efforts, but in spite of their opposition, the program of regulation was expanded.

The Hepburn Act (1906) further extended the powers of the Interstate Commerce Commission, and made it for the first time a really effective agency. The Meat Inspection Act (1906) and the Pure Food and Drugs Act (1906) aimed to protect public health. Roosevelt wrote that he considered them “second only in importance” to the Interstate Commerce law. The Employers' Liability Act (1906) attempted to make corporations engaged in interstate commerce responsible for injuries received by their employees. Although this act was declared unconstitutional by the Supreme Court in 1908,<sup>16</sup> a more carefully drawn act, passed in 1908, was upheld by the court.<sup>17</sup> The Rich Man's panic of 1903 was followed by the Aldrich-Vreeland Act of 1908, which provided for an emergency currency to be lent to the banks in time of stress, and by the appointment of a National Monetary Commission to investigate the banking and currency systems of the world. Largely as a result of its report, the Federal Reserve System was adopted later. Suits were brought against the sugar trust for reporting short weight in its importations, and against the Standard Oil Company for receiving rebates. The dissolution of the Standard Oil Com-

<sup>16</sup> Employers' Liability Cases, 207 U.S., 463 (1908)

<sup>17</sup> Second Employers' Liability Cases, 223 U.S., 1 (1912).

pany<sup>18</sup> and of the American Tobacco Company<sup>19</sup> was ordered by the Supreme Court. Roosevelt succeeded in infusing life into the Sherman Anti-Trust Act, although he realized its defects; and in his message of 1907 he recommended that it should be "so amended as to forbid only the kind of combination which does harm to the general public."

Roosevelt continued his policy of conservation of natural resources. He was interested in irrigation projects for the reclamation of arid lands, in the enlargement and protection of national forests, in the improvement of internal waterways, and in publicity campaigns to stimulate conservation by the state governments. The conference of governors, to which a number of private citizens also were invited, called in 1908 to consider conservation policies, was the first attempt to assemble the executives of the states for the purpose of discussing national problems. Following this conference a National Conservation Commission was created, and similar bodies were set up in many of the states.

At the end of his term Roosevelt could point with pardonable pride to a long list of achievements. He was especially proud of his improvement of the navy and his reclamation and conservation projects.<sup>20</sup> In spite of his difficulties with stand-pat Congressmen and Senators, and the opposition of Wall Street, he enjoyed unprecedented popularity in the country at large. The fear of executive usurpation which troubled Congress was not felt by the ordinary citizen. Roosevelt believed in party organization, and worked with it when it suited his purposes. But he also used other means of formulating public opinion; and he gave little aid to the small group of insurgents who were beginning the fight against the power of the Speaker and against the state bosses that controlled the Senate. Roosevelt's personality and his aggressive policies appealed to the public imagination, and conservative thinkers feared that he might set up a popular dictatorship. There was a widespread popular demand, not shared by the political leaders, that he should stand for another term, but he held firmly to his decision not to accept the nomination.

Roosevelt favored Taft as his successor. While he believed that Root was the ablest man in public life, he felt that Root's earlier association with the corporations would make him a poor candidate.

<sup>18</sup> *Standard Oil Co. v. United States*, 221 U.S., 1 (1911).

<sup>19</sup> *U.S. v. American Tobacco Co.*, 221 U.S., 106 (1911).

<sup>20</sup> See his letter to Sydney Brooks, published in J. B. Bishop, *Theodore Roosevelt and His Time* (1920), II, 129-132.

Taft was the man whom Roosevelt had depended upon to "sit on the lid" when he was absent from Washington, and Roosevelt believed that Taft was best fitted "to carry on the work upon which we have entered during the past six years." "He and I," wrote Roosevelt, "view public questions exactly alike." The Western Progressives, who were beginning to be an important factor in the Republican party, favored LaFollette, and tried to secure planks in the platform favoring tariff revision, popular election of Senators, publication of campaign contributions and expenditures, and physical valuation of railroads. These demands were termed "Socialistic and Democratic" by the conservative leaders. Roosevelt dominated the convention, secured the nomination of Taft, and the adoption of a platform committed to the Roosevelt policies. Tariff revision, however, was promised to meet the demands of the Middle West. Taft was generally accepted as the political heir of Roosevelt.

Bryan, whose control of the Democratic convention was as pronounced as that of Roosevelt in the Republican convention, was nominated for President on the first ballot. The Democratic platform condemned the Republican administration, but favored many of the policies that Roosevelt had begun. It continued its attack upon the trusts, urging the abolition of private monopoly, and proposing specifically legislation against "interlocking directorates," federal licenses for corporations controlling 25 per cent of the commodity in which they dealt, and the sale on equal terms in all parts of the country of their products. It pledged itself to the removal of duties on "trust-made goods," and declared against the use of injunctions in labor disputes. It attacked the power of the Speaker of the House of Representatives and declared in favor of a federal income tax. It omitted Bryan's earlier demand for government ownership of railways, and made no mention of direct legislation. It stated that there were "increasing signs of an awakening throughout the country," and that Bryan was no longer a radical, since the public opinion of the country had caught up with him. The platform stated that the Democratic party was "the champion of civil rights and opportunity for all"; the Republican party was "the party of privilege and private monopoly." "Shall the people rule?" was made the chief issue.

While Taft was elected by a large majority, Bryan received over a million more votes than Parker had received in 1904. The radical parties—Socialist, Populist, Socialist Labor, and Prohibition—

polled about a half-million votes. The outcome of the election showed that a feeling of unrest and dissatisfaction was growing. In the election of 1910 the Republicans lost their majority in the House of Representatives, and the complete control of the national government, which that party had enjoyed for fourteen years, came to an end. Its policies had been framed to meet the demands of a new industrial era and its earlier attitude of friendliness to big business was modified, under Roosevelt, to one of increasing regulation. The earlier American idea of unrestricted individual freedom was being abandoned, because under existing conditions it tended to destroy equal opportunity. Realizing the hopelessness of third-party movements and the weakness of the Democratic party, the independent and dissatisfied voters turned to an attempt to control the Republican party by bringing its organization under the dominance of the progressive element. In many of the states the younger element were successful in a series of reforms that aimed to "drive the system out of politics." In the Sixty-first Congress (1909) the insurgent Republicans carried their fight into the national arena; and the Western Progressives, openly hostile to the dominant organization of the party, began a strenuous effort to make the old party responsive to the new demands.<sup>21</sup> They attacked the power of Speaker Cannon, the rules of the House, and the control of committees by the old group and by the Eastern states.<sup>22</sup> They also opposed, especially in the Senate, the Payne-Aldrich Tariff Bill,<sup>23</sup> which they felt did not carry out the pre-election promises of revision downward.

When President Taft referred to the tariff bill as "the best tariff ever passed by the Republican Party,"<sup>24</sup> sneering and cynical comments were heard in all parts of the country. Progressive Middle West Republicans asserted that President Taft was not carrying out the Roosevelt policies;<sup>25</sup> conservative leaders tried to read the insurgents out of the party. While the President was not a reactionary, he did not move forward as rapidly as public opinion.<sup>26</sup>

<sup>21</sup> B. P. Dewitt, *The Progressive Movement* (1915); T. Roosevelt, *Progressive Principles* (1913); R. M. LaFollette, *Autobiography* (1913); L. Haines, *The Senate, 1907-1912* (1912).

<sup>22</sup> G. B. Brown, *Leadership of Congress* (1922); P. D. Hasbrouck, *Party Government in the House of Representatives* (1927).

<sup>23</sup> I. M. Tarbell, *The Tariff in Our Times* (1911), Ch. XIII.

<sup>24</sup> In his Winona speech. See *Senate Docs.*, 61st Congress, 2nd sess., No. 164.

<sup>25</sup> C. Gardner, ed., *Letters of A. P. Gardner* (1918).

<sup>26</sup> For the political theory of Taft, see his *Four Aspects of Civic Duty* (1906); *Liberty Under Law* (1922); *Our Chief Magistrate and His Powers* (1916); *Popular Government* (1913); *Present-Day Problems* (1908); *The*

He was a legalist, deliberate and judicial, in contrast to Roosevelt, who was accustomed to quick executive decision, and who viewed the law as a convenient instrument to be wielded by a vigorous leader. By 1910 the Taft administration was badly discredited. The fight against the power of the Speaker had been brought to a successful conclusion, and he had been deprived of his authority to appoint committees and to determine the rules of the House. The Ballinger-Pinchot controversy had antagonized the followers of Roosevelt, and had started a "back from Elba" movement to place Roosevelt in the leadership of the opposition.

In August, 1910, Roosevelt, who reëntered politics with enthusiasm, outlined the principles of the "New Nationalism."<sup>27</sup> These included strict control of the trusts, tariff revision, labor legislation, conservation, graduated income tax, direct primaries, and the recall of elected officials. The extension of national powers was urged to prevent big business from taking refuge in the "twilight zone" between national and state jurisdiction, and from invoking the doctrine of States' rights to prevent hostile legislation by Congress. The "New Nationalism," said Roosevelt, placed national needs before sectional or personal advantage. These principles were welcomed by the progressives. Meantime President Taft incurred further criticism by his appointment to the Chief Justiceship of the Supreme Court of Justice White, a conservative, a Democrat, an ex-Confederate soldier, and a Roman Catholic; and by his attempt to negotiate a reciprocity treaty with Canada. Both the Western insurgents, who feared competition from Canadian wheat, and the high-tariff Republicans, who opposed any breach in the wall of protection, opposed this policy. Some observers believed that Taft's reciprocity scheme was chiefly responsible for wrecking his administration. It also created bad feeling in Canada, where it was felt that the United States desired to absorb her northern neighbor.<sup>28</sup>

In January, 1911, the National Progressive Republican League was organized, under the leadership of Senator LaFollette. It put forward a program favoring direct election of United States Senators, direct primaries, direct election of delegates to national conventions, and direct election of President and Vice-President. See *Presidency* (1916); *Presidential Addresses and State Papers* (1910); *Representative Government in the United States* (1921).

<sup>27</sup> In his speech at Osawatimie, Kans., Aug. 31, 1910.

<sup>28</sup> Champ Clark in the House said that he "hoped to see the day when the American flag would float over every square foot of the British North American possessions." President Taft, in a letter to Roosevelt, said that reciprocity would "make Canada only an adjunct of the United States."



ventions, the initiative, referendum, and recall, and strict corrupt-practices Acts. It denied any intention of seceding from the Republican party, but aimed to secure control of the party for progressive ideas. While the declaration of principles of the League asserted that it was not intended "to promote the political fortunes of any man," it was generally understood that LaFollette was its candidate; and a National Progressive Conference, held October 16, 1911, approved the Progressive platform and adopted a resolution which stated that "the record of Senator LaFollette in state and nation makes him the logical candidate for the President of the United States." In speeches and in editorials in the *Outlook*, Roosevelt professed Progressive principles, though he refused to join the League. He was convinced that he had been mistaken in Taft, and he criticized the administration freely. A strong movement was begun to put him at the head of the Progressive movement, but he refused to state definitely whether he would accept the nomination or not. Roosevelt realized that many Republicans were unfavorable to Taft, but were also opposed to LaFollette, and he was willing to accept the nomination in case there was a strong public demand.<sup>29</sup> LaFollette felt bitterly that Roosevelt was using him as a "stalking horse" until he was ready to come forward himself as a candidate.<sup>30</sup> While the latter years of Taft's administration were marked by considerable constructive legislation, and by the successful conclusion of numerous cases against the trusts, Taft could not live down the reputation of the early part of his administration, and he realized that he was not likely to be re-elected for a second term. Roosevelt attacked the policy of regulating trusts by lawsuits and proposed a federal commission as the best form of control.<sup>31</sup>

While Taft's supporters had little hope of his reelection, they were determined to renominate him in order to prevent the party from coming under Progressive control. The "collapse"<sup>32</sup> of LaFollette, at Philadelphia, was taken as an excuse by many Progressive leaders to turn to Roosevelt. Seven governors and seventy other influential Republicans met at Chicago to boom his candidacy,

<sup>29</sup> See Roosevelt's letter to W. B. Howland, in H. J. Howland, *Theodore Roosevelt and His Time* (1912).

<sup>30</sup> See LaFollette's *Autobiography* (1913), pp. 530-619.

<sup>31</sup> See his "The Trusts, the People, and a Square Deal," in the *Outlook* (Nov. 18, 1911).

<sup>32</sup> See the long and incoherent speech made by him at the banquet of the Periodical Publishers Association, Feb. 2, 1912.

and sent him an urgent letter to respond to "a plain patriotic duty." President Taft referred to the Progressive leaders as "neurotics." Roosevelt announced that he would accept the nomination if it were tendered to him. His "hat was in the ring." A bitter struggle ensued for the control of the party machinery, and in numerous states rival delegations were sent to the national convention. The nomination depended upon the action of the convention in deciding these disputes. Organized by the old guard, the convention seated enough Taft delegates to assure his nomination. A large number of the Roosevelt delegates refrained from any further part in the convention, and a schism in the party was evident. Roosevelt stated that Taft was "the beneficiary of a successful fraud." Taft, in his speech of acceptance, congratulated his party on being saved from "radical proposals involving dangerous changes in our present constitutional form of republican government and our independent judiciary."<sup>33</sup> The Republican platform carefully avoided questions that would cause factional bitterness. It declared for a "self-controlled representative democracy," and favored a federal commission to regulate trusts, a "readjustment" of the tariff with the aid of a commission of experts, and a reformation of the monetary system.

On the day following Taft's nomination, the supporters of Roosevelt assembled, passed resolutions denouncing the "steam-roller" methods of the convention, and urged Roosevelt to lead a third party. He agreed to make the fight, stating that "we stand at Armageddon and we battle for the Lord." He suggested the calling of a new convention, and an appeal to all sections and all parties. The Progressive convention that met in August was more like a religious revival meeting than a political convention, and the usual machine organizations were missing. Roosevelt was nominated by acclamation, and made a stirring plea for the "crusade" upon which they were entering. Two elements were dominant in the convention: one demanding a change in political machinery, the other calling for an extensive program of social legislation. The platform adopted attacked the "invisible government" resulting from an unholy alliance between politics and business, and recommended women's suffrage, direct government, and an easier way of amending the Constitution. It emphasized the need of a strong national government, of tariff revision downward, and of elaborate social

<sup>33</sup> This referred particularly to Roosevelt's proposal for a "recall of judicial decisions."

legislation to improve the conditions of laborers. A department of Labor in the Cabinet was favored. They keynote of the platform was the pledge to "sweep away old abuses" and to "build a new and nobler commonwealth."

The Democratic convention met with high hopes shortly after the Republican convention, knowing that if Roosevelt ran on a third ticket he would draw many votes from Taft; if not, many Republicans would vote for the Democratic candidate in case he represented the liberal wing of the party. The division was marked between the radical members of the party, who still followed Bryan, and the conservative members, who had controlled in 1904. Bryan insisted that a liberal candidate should be chosen. He secured the adoption of a resolution that the convention should not nominate a candidate identified with "the privilege-hunting and favor-seeking class"; and after a bitter struggle in which Champ Clark seemed the most likely candidate, Bryan threw his influence on the side of Woodrow Wilson and secured his nomination.<sup>34</sup> Clark felt that he had been betrayed by Bryan,<sup>35</sup> but Bryan believed that the sinister influences he feared were supporting Clark. The Democratic platform attributed the high cost of living to the Republican tariff, pledged "immediate downward revision," repeated the labor-injunction plank of 1908, asked that the Sherman Act be restored to its original vigor, and demanded revision of the banking and currency laws.

Wilson had contributed to historical and political literature,<sup>36</sup> had been urged as the "predestined candidate" for the Presidency by George Harvey, editor of *Harper's Weekly* and the *North American Review*, as early as 1906, and had become nationally known as an independent and progressive Governor of New Jersey. He was in sympathy with the progressive wing of the party, yet was considered safe by the conservative element in the East. In opposition to the "New Nationalism" of Roosevelt, Wilson put forward his "New Freedom." He emphasized economic liberalism, and the emancipation of the people rather than their protection. The people must work out their own political salvation, not have it bestowed upon them by "guardians" from the upper classes.

<sup>34</sup> Bryan, whose state was pledged to support Clark, withdrew that support when the Tammany delegation from New York turned to Clark.

<sup>35</sup> C. Clark, *My Quarter-Century of American Politics* (1920).

<sup>36</sup> See his *Congressional Government* (1885); *Division and Reunion* (1893); *An Old Master and Other Political Essays* (1893); *Mere Literature* (1896); *The State* (1898); *Constitutional Government in the United States* (1908); *History of the American People* (1908); *The New Freedom* (1913).

He attacked the "partnership" between the government and the trusts. Free competition should be restored, and special protection by the government in the form of tariffs should be removed. His political theory was colored by the doctrine of economic individualism and by a modified form of the doctrine of states' rights.

In his political writings Wilson constantly called attention to the life and spirit of government and to the actual working of political forces. He denounced the mechanical and formal study of government, and laid stress on the actual workings of political forces. In his earlier writings he criticized the inefficiency of the congressional system, with its irresponsible committees, and urged responsible government, held to strict accountability. He took a middle ground between socialism and individualism, holding that the state should control natural monopolies, and prevent interference with fair competition. It should destroy all artificial industrial privileges, and remove all mechanisms that prevent free expression of public will. He believed that a clearer insight into the politics of a nation could be secured by a study of its poetry than from the writers on public affairs and constitutions. Words and rhetoric appealed to him strongly.

The popular vote of Wilson was not as large as that of Bryan in 1908, nor as that of Roosevelt and Taft combined, but his majority in the electoral college was overwhelming. Like Lincoln, Wilson was a minority President. The Democrats also secured control of both houses of Congress. For the first time since the Civil War the Democratic party was thoroughly in power, under strong leadership, and with a national legislature supporting the executive. The Socialist vote doubled, showing that neither of the progressive candidates was radical enough to satisfy the growing spirit of protest. Wilson felt that he was the apostle of a new era. He had a high conception of the powers of the Presidency, combining the position of a responsible prime minister with that of a popular leader of the Jacksonian type. In his inaugural address he dedicated himself to a restoration of American ideals, and called upon all "forward-looking" men for aid in the cause of humanity. To him it was "not a day of triumph, it is a day of dedication." Among the evils which were to be remedied, he referred particularly to the tariff, the banking and currency system, and the control of trusts—a triple wall of privilege which prevented individual freedom and opportunity.

In the special session of Congress, called in April, 1913 Presi-

dent Wilson reverted to the original practice of appearing in person before Congress to read his message, which dealt with the question of tariff reform. He argued that American industry no longer needed protection, and that the tariff should be used to produce revenue, without interfering with natural competition. The Underwood Tariff bill, in the preparation of which Wilson took active part, provided for the removal of duties on foodstuffs and raw materials of manufacture, the reduction of duties on articles of export, the taxation of luxuries, and a graduated income tax. The final adoption of the Sixteenth Amendment, authorizing a federal income tax, came just in time to make possible that means of making up the reduction in revenue that would result from a lowered tariff. In spite of opposition in the Senate, which Wilson publicly branded as a "numerous, industrious, and insidious lobby," the tariff bill was finally adopted. It marked a revolution in our tariff policy, and a recognition that we had changed from an agricultural to an industrial nation.

The second step in Wilson's program was proposed in his message of June 23, 1913, in which he urged a more elastic currency, a banking system that would mobilize reserves and prevent the concentration of financial resources, and federal control of the banking system. The Federal Reserve Banking bill placed the emission of notes under the supervision of a federal board, divided the country into twelve districts with a federal reserve bank in each, and authorized the issue of currency on the basis of bonds and commercial paper, while retaining the gold basis in theory. It aimed to distribute the money power, to check the concentration of financial control in New York, and to make borrowing easier. It was a compromise between the complete identification of the government and the banking interests in the National Bank of 1791 and the complete separation of these interests in the independent treasury system of 1840. The Farm Loan Act (1916) placed the federal government in the money-lending business, and put the financial resources of the nation at the service of laborers on the land in need of funds.

The third step in the attack on privilege came in Wilson's message of January 20, 1914, which recommended legislation to clarify, strengthen, and supplement the Sherman Anti-Trust Law. After long discussion two laws were passed, The Federal Trade Commission Act provided for a federal board with investigatory and advisory powers over all corporations except common carriers

and banks. It aimed to give the advice of a body of economic experts to both the corporations and the courts. The Clayton Act, which was a somewhat miscellaneous combination of several proposed laws, was intended to supplement existing legislation against monopolies. It attacked unfair trade practices, interlocking directorates, the use of injunctions in labor disputes, and dishonest corporation finance. As a concession to the more radical element, it exempted labor organizations from the provisions of the anti-trust laws. Labor received additional protection in the LaFollette Seamen's Act and in the Adamson law, which provided for an eight-hour day for trainmen. In all this legislation the direct influence of President Wilson was evident. He viewed himself as the aggressive leader of his party, in legislation as well as in administration. "The Presidency," he said,<sup>37</sup> "is an office in which a man must put on his war paint." In their platform of 1916 the Democrats boasted that they "found our country hampered by special privilege" and that "under a leadership that has never faltered, these abuses have been corrected and our people freed therefrom."

The increasing mass of legislation showed the strong trend toward social democracy. The Democratic party in power abandoned its individualistic doctrines, and was quite willing to expand the powers of government in the direction it considered desirable. The old doctrine of "the less government the better" was no longer held by those who hoped to benefit from governmental action. If "the people ruled," there was no objection to the use of their power for social ends. The "interests" and the courts became the chief supporters of the laissez-faire policy, and of the rights of private property. They opposed the extension of governmental interference and the increased taxation required to carry out the program of social reform. The States' rights point of view, originally held by Wilson, was also modified in his political practice. Large sums were voted by Congress for the promotion of "general welfare" in the states—for forestry, education, roads, and public health. Local autonomy was reduced by federal standardization and control, and the process of nationalization continued.

While Wilson at first tried to subordinate partisan considerations and appealed to all men of liberal ideas, regardless of party,<sup>38</sup>

<sup>37</sup> In a speech at Staunton, Va., Dec. 28, 1912.

<sup>38</sup> He said: "I have no interest in the political party, except as an instrument of achievement."



he was gradually forced to assume a more partisan attitude. He took over the leadership of the Democratic party, long held by Bryan, and he appealed to the people to support the candidates and the policies of his party. His chief support came from the South. Eastern Democrats of the conservative type, upholding the traditions of Tilden and Cleveland, were lukewarm in their attitude. Western Democrats, interested in popular government and in agrarian relief, opposed the preference given to Southern products and the control of party machinery by Southern leaders. The East had been in power during the Republican administrations; the South was in power under Wilson; the Western leaders, more independent in politics, continued their progressive agitation and their sectional organization. The Democratic convention of 1916 accepted the leadership of Wilson; and in his speech accepting a second nomination he defended aggressively the record of his party.

The Progressive party, as an organization, declined in strength. The economic and social reforms accomplished by Wilson weakened the demands of the reform element for a separate party; the outbreak of the European war diminished the importance of domestic partisan issues and led men to return to traditional alignments; the weakness of the Progressives in state and local elections made difficult the maintenance of a national organization. While a Progressive convention nominated Roosevelt, he declined the nomination and no substitute was provided. Many Progressives became ardent supporters of Wilson; others returned to the Republican party with the hope of securing internal reform in its organization. In nominating Hughes, the Republican leaders made an appeal to the reform elements in the party and to the Roosevelt supporters; but the defeat of Hughes strengthened the hold of the conservative leaders on the party organization. While Wilson defeated Hughes by a small majority, the total Democratic vote showed a marked increase. Hughes received about a million more votes than Roosevelt and Taft had received in 1912; Wilson received about three million more votes than he had received in 1912. Apparently there had been a decided shift of votes to the Democratic party, due largely to the personal leadership of President Wilson.

As the World War came to overshadow all other interests, party ties were temporarily loosened. The organization leaders of both parties favored our entry into the war, though for different reasons. Other leaders in both parties opposed the President's policies for personal or sectional motives. Meantime the Congressional elections

of 1916 and 1918 reduced and finally destroyed the Democratic control in Congress. This encouraged the conservative leaders of the Republican party, who were able to defeat the program which the President brought back from Paris, and who were determined to nominate a reliable adherent of the organization in 1920. At the same time the elements of protest were more clamorous. The campaign for preparedness, the repression of freedom of speech,<sup>39</sup> and the dislocation of industry and labor during and after the war added to the dissatisfaction of the more radical elements.

During the war American Socialists were active in anti-military agitation.<sup>40</sup> Their manifesto in 1914 stated "opposition to this and all other wars, waged upon any pretext whatsoever," as "destructive of the ideals of brotherhood and humanity to which the international Socialist movement is dedicated." They urged the government to seize the food supplies and industries of the nation and prevent the exportation of food and munitions to Europe. "Starve the war and feed America" was the Socialist slogan. In 1915 the Socialists adopted a peace program, advocating international federation, universal disarmament, the extension of democracy, and the removal of the economic causes of war. Meyer London, the only Socialist in Congress, introduced a resolution calling upon the President to convene a congress of neutral nations. In the campaign of 1916 the Socialists carried on a national campaign against military preparedness and war. Their platform reaffirmed the "principles of international brotherhood, world peace and industrial democracy." Even after the United States entered the war, the Socialists continued their opposition and reaffirmed allegiance to internationalism. The withdrawal of a number of well-known "intellectualists" from the party left the anti-war faction more completely in control. The seceding group formed the Social Democratic League and gave chief attention to the problems of reconstruction after the war. As a national policy it favored "the retention of much of the machinery for mobilizing labor created during the war." In spite of the defection of this group, the Socialist party gained in strength during 1917. This was due to

<sup>39</sup> Z. Chafee, *Freedom of Speech* (1920); G. Frank, "Is Free Speech Dangerous?" in *Century*, C, 255-260 (July, 1920); H. L. West, "Democracy and a Free Press," in *Bookman*, LII, 116-121 (Oct., 1920); G. R. Brown, "The Lynching of Public Opinion," in *North American Review*, CCIII, 795-802 (June, 1916); "The Espionage Act Interpreted," in *New Republic*, XX, 377-383 (Nov. 26, 1919); A. L. Lowell, *Public Opinion in War and Peace* (1923); W. Lippmann, *Liberty and the News* (1920).

<sup>40</sup> A. Trachtenberg, *The American Socialists and the War* (1920).

a widespread opposition to the war, to economic discontent caused by rising prices, and to resentment against interference with freedom of speech and of the press. Toward the close of the war the Socialist party declined in strength, partly because the older parties combined against it for patriotic motives, partly because increased wages diminished the economic discontent, and partly because of vigorous governmental suppression. After the war the division in the ranks of the Socialists further weakened the party. The older moderate political group seems to be declining in influence, and the more revolutionary element is in the ascendancy. One Socialist member of Congress was elected in 1926.

To the economic discontent during and after the war was added the revolt of the less prosperous farmer, who did not share in the general prosperity of the country. The Non-Partisan League was expressive of the purposes of the organized farmers, and it aimed to secure control of the organization of one party or the other in the Western states and to form alliances with economic interests in various parts of the country. In 1903 the Farmers' Educational and Coöperative Union was organized, devoting itself to coöperative methods of marketing and distribution. Since 1921 a well organized group of Senators and Representatives have maintained an agricultural "bloc" in Congress, with its own caucus, ignoring party lines.<sup>41</sup> This group is interested in farm-relief legislation, and it adds its strength to one party or the other, depending upon its attitude toward measures affecting agriculture. It adopts the principle of independent voting in national legislation. In the Sixty-eighth Congress the almost equal division of the two parties gave the farm bloc the balance of power. It was given recognition in committee assignments and exercised considerable influence on the course of legislation. In 1927 it secured the passage of the McNary-Haugen bill, which aimed to restore the prices of farm products through the creation of a federal commission authorized to buy up surplus farm products and sell them abroad for what they would bring. This subsidy to the farmers was bitterly attacked by the financial interests and by conservative thinkers as a step toward socialism. The bill was vetoed by President Coolidge. All of these movements represent a revived agitation among the farmers, who had been generally quiescent since the decline of Populism. Many keen students of American political thought believe that the immediate future of American politics lies more

<sup>41</sup> A. Capper, *The Agricultural Bloc* (1923).

largely in the hands of the farmers than in those of any other single group in the country.

By 1919 a conservative reaction had set in and public opinion desired a return to "normalcy," and the maintenance of "law and order." Impetus to this movement was given by the formation of the American Legion, composed of ex-service men. Its purpose, like that of the Grand Army of the Republic after the Civil War, was to strengthen the spirit of patriotism, and to exert a united influence on political and social life. It was active in urging "adjusted compensation" for former service men. Its stated objects were "to uphold and defend the Constitution of the United States, to maintain law and order, to foster 100 per cent Americanism, and to preserve the memories and incidents of the Great War." In a more extreme form the revival of the Ku-Klux Klan represented the conservative point of view and the desire to enforce a uniform standard of Americanism.

The lofty ideals of world organization and the belief in a new and happy era after the war were generally abandoned, and American thought turned to the grave problems of adjusting our political and economic life to a régime of peace. During the war the government had been permitted of necessity to exercise large control over the social and business life of the country, but this control was repugnant to our traditions and there was a general desire to free industry from government regulation as soon as possible. Labor, as well as capital, was jealous of government interference after the war. The generous truce between capital and labor, which had existed during the war, came to an end. Capital complained of high wages and the rapacity and power of the laborers; labor complained of high prices and the greed of the profiteers. An epidemic of strikes broke out all over the country, and the public was the chief sufferer. President Wilson's attempt to have representatives of capital, labor, and the general public "consult together on the vital questions concerning our industrial life" resulted in emphasis of their differences rather than in reconciliation. This unrest encouraged revolutionary agitators, led by the International Workers of the World, to put forward anarchistic doctrines, and to perpetrate outrages. Conservative opinion was fearful of the spread of Bolshevik ideas, and was hostile to all forms of socialistic doctrine. A Senate committee recommended vigorous Americanization policies, restriction on immigration, and the deportation of undesirables. The departments of justice, na-

tional and state, were vigorous in combating radical propaganda. A decidedly materialistic reaction set in after the war.

Previous to the World War, American opinion, in general, was favorable to immigration. Idealists viewed America as the refuge for the oppressed classes of the Old World; materialists demanded abundant and cheap labor for our industries. Except for the few restrictions upon criminals, idiots, diseased, contract laborers, and avowed anarchists, no limitation was placed upon the number of immigrants admitted. Between 1900 and 1910 almost nine million immigrants were admitted, mainly from Italy, Austria-Hungary, and Russia. The war brought to the attention of Americans the large unassimilated elements in our population and the revolutionary doctrines brought to America by many of the recently arrived immigrants. It was evident that conditions in Europe after the war would result in an unprecedented rush for America; and opposition grew, both to the numbers and to the types of the threatened movement. In 1921 a bill was passed limiting the annual quota of immigrants from any country to 3 per cent of the number of its people here in 1910. In 1924 further restrictions were imposed by the Johnson-Lodge bill, which allowed each country to send only 2 per cent of the number of its people here in 1890. These bills marked a fundamental change in American immigration policy, not only placing an absolute limit on the total number to be admitted, but also deliberately discriminating in favor of the North European countries and against those of Southeast Europe.<sup>42</sup>

The passage of the Eighteenth Amendment (1919), establishing nation-wide prohibition, and of the drastic Volstead Act for its enforcement created wider popular discussion than any other public measure. Opponents of the measure argued that it was forced upon the people against their will, under the pressure of war conditions, and when a large number of men were out of the country; that it was an intolerable invasion of the private rights of the individual; that it was impossible of enforcement and would lead to widespread disregard for law; and that it had created a vast illegitimate business, with added dangers to public health in the quality of liquors sold. Supporters of the measure pointed to the decrease in drunkenness, the removal of the saloon from politics, the increased industrial efficiency, the empty jails and workhouses, and the growth in savings-bank deposits. From the point of view of political theory, many students of government believe that such

<sup>42</sup> R. L. Garis, *Immigration Restriction* (1927).



a provision has no place in the Constitution, but should be dealt with, if at all, by statute. They are also dubious concerning the wisdom of enacting a law which is not supported by a general consensus of public opinion, because of the difficulty of enforcement and the resultant disrespect for law in general.

The Eighteenth Amendment was vigorously attacked on the ground that it overstepped certain limitations upon the constitutional amending power.<sup>43</sup> It was argued that it was not an "amendment," since it made no alteration in the framework of government; but that it was legislation affecting the rights of individuals, and therefore not coming under the amending power. It was also argued that it was an improper interference with the police power of the states, and that if such transfer of powers from the states to the federal government were permitted, the states might be substantially destroyed by constitutional amendment. The Supreme Court, however, held that the provisions of the Eighteenth Amendment were "within the power to amend, reserved by Article V of the Constitution."<sup>44</sup>

By 1920 the three outstanding leaders, Bryan, Roosevelt, and Wilson, who had dominated American politics during the first two decades of the century, were no longer active. Both parties were controlled by organization politicians, and conspicuous leadership was absent. Numerous candidates were eager for the presidential nomination in each party. Among the Republicans, Hiram Johnson and Leonard Wood represented the Roosevelt traditions; Governor Lowden, the conservative attitude of the business interests; and Herbert Hoover, the principle of efficiency divorced from politics. Johnson was opposed as too radical; Wood, as too military; and Lowden, as too closely associated with big business. Hoover was considered too independent, and his favorable attitude to the League of Nations made him unacceptable to the group of Senators who controlled the convention. Senator Harding, the candidate of this group, was finally nominated. The Republican platform condemned the "unconstitutional and dictatorial course" of President Wilson, and attacked especially his foreign policy. It pledged the party to "fulfil our world obligations without sacrifice to our

<sup>43</sup>W. L. Marbury, "The Limitations upon the Amending Power," in 33 *Harvard Law Review*, 223; G. D. Skinner, "Intrinsic Limitations on the Power of Constitutional Amendment," in 18 *Michigan Law Review*, 213; J. D. White, "Is There an Eighteenth Amendment?" in 5 *Cornell Law Quarterly*, 113.

<sup>44</sup>National Prohibition Cases, 253 *U.S.*, 350 (1920). See W. F. Dodd, "Amending the Constitution," in 30 *Yale Law Journal*, 321.



national independence." It urged a return to "normalcy" and the restoration of "law and order." Republican leaders were determined to reduce the power of the President and restore the influence of Congress. Harding was selected as a "safe" party man who would not interfere with this purpose.

The Democratic convention of 1920 was controlled by the local leaders who had been in power before the Wilson régime. Bryan took little interest after the defeat of his effort to insert a dry plank in the platform. Wilson made no attempt to influence the convention, except to urge that it select a candidate favorable to the League of Nations. After numerous ballots, with McAdoo and Palmer as the leading candidates, Governor Cox of Ohio was finally nominated. The Democratic platform urged the "prompt ratification of the Treaty of Versailles, without reservations which would imperil its essential integrity"; and Cox tried to make the League of Nations the sole issue in the campaign. Harding's policy of "America first" appealed more to the mass of American opinion, which was weary of world problems and anxious over internal difficulties. Neither Harding nor Cox was a prominent national figure, but the reaction against the Wilson régime was strong, and the Republican majority was overwhelming. Bryan laid the defeat to Wilson's policies and methods, especially his refusal to deal with the Senate as a coördinate branch of government. The people were weary of a "superman" in office, and Harding's appeal as an average American citizen was strong. Calvin Coolidge,<sup>45</sup> the successful candidate for Vice-President, characterized the Republican victory as the "end of a period which has substituted words for things, and the beginning of a period of real patriotism and national honor." President Wilson felt that we had lost our chance of world leadership and that a clever campaign of propaganda to arouse national prejudice had defeated his ideals.

With the accession of Harding, the regular party organization dominated the administrative departments, and Congress became the arena in which the various interests and leaders fought their battles. The most outstanding figures were insurgents, such as LaFollette, Borah, and Johnson. Harding established a new practice by inviting the Vice-President to sit in the Cabinet. In his first message he emphasized domestic problems, urging tariff re-

<sup>45</sup> R. A. Woods, *The Preparation of Calvin Coolidge* (1924); E. E. Whiting, *Calvin Coolidge: His Ideals of Citizenship* (1923); W. A. White, *Calvin Coolidge* (1925); R. M. Washburn, *Calvin Coolidge* (1923).

vision, a national budget, economy and lower taxes, restriction of immigration, aid to farmers, and generous treatment of disabled soldiers. In his foreign policy he advocated coöperation and conference with the nations of the Old World, but a careful safeguarding of American sovereignty. A new tariff bill was promptly passed, restoring the high duties of the Payne-Aldrich Act. Extensive debates took place on the questions of tax revision, the payment of European debts, and the bonus for former service men. Considerable discredit was brought on the Harding administration by scandals in connection with the leasing to private interests of government oil deposits.<sup>46</sup> Most of the time of the Senate was devoted to partisan bickering and to investigations, until the President informed the Senate that the continuation of such methods would throw the government into disorder. The loss of prestige to the Republican party caused by this situation was partially avoided by the death of President Harding and the efforts under President Coolidge to clear up the oil scandals.

No important change in policy resulted from the succession of Coolidge to the Presidency. His attitude was one of conciliation and prudence. Coolidge viewed the Republican party, in its principles and traditions, as the heir of the Federalists and the Whigs, and was an ardent admirer of Alexander Hamilton. With him he believed that manufacturing was the motive power of American wealth and national progress. His political theory was based upon the importance of economic forces, combined with a strong emphasis on education, thrift, and morality.<sup>47</sup> He opposed the bonus and the subsidy to farmers, the distribution of large grants to the states for roads, health, and education, and interference with business interests.

In Congress the two parties were so evenly matched that a faction of independent Republicans and the members of the Farm Bloc held the balance of power. The program of economy and of tax reduction was continued, although Congress and the President did not always agree on this issue. The advocates of social reform by collective action had long urged federal control of child labor. Blocked by the Supreme Court in their efforts at regulation through federal law, they urged an amendment to the Constitution permitting national child-labor legislation. Though successful in se-

<sup>46</sup> M. E. Ravage, *The Story of Teapot Dome* (1924).

<sup>47</sup> For the political theory of Coolidge, see his *Have Faith in Massachusetts* (1919); *The Price of Freedom* (1924); *America's Need for Education* (1925).

curing the necessary vote in Congress for the proposal of this amendment, they failed to secure favorable ratification by the states. Many persons believed that the process of transferring powers from the states to the national government should be checked.

In 1924 the Republicans renominated Coolidge by acclamation. The Democrats, after a bitter contest between McAdoo, the leader of the radicals, and Governor Smith of New York, the leader of the moderates, finally nominated J. W. Davis. The Democratic party was seriously divided on the prohibition issue, its Eastern leaders being openly "wet," while the South and Middle West demanded a "dry" candidate. The nominations of Coolidge and Davis, both conservative, opened the way for an insurgent candidate who could combine the forces of protest. A hastily assembled convention, composed largely of delegates from the farmer and labor elements, with strong support from former Progressives, nominated Senator LaFollette. His candidacy was also indorsed by the Socialists and by the American Federation of Labor. On the surface it appeared as though the great economic combination of the dissatisfied elements had at last been accomplished.

In the campaign the Republicans stood fast by the Constitution and the wisdom of the Fathers, emphasizing normalcy and common sense and opposing radical innovations.<sup>48</sup> The Democrats made political capital of the corruption in office laid bare by Congressional investigations during the Harding régime. LaFollette attempted to unite agrarian and labor elements in an attack on monopolies, on the Supreme Court, and on dollar diplomacy in the Caribbean and the Orient. Coolidge received a large majority, and a Congress more in sympathy with his policies was elected. In his inaugural address Vice-President Dawes made a scathing attack on the practice in the Senate of intolerable delay, and urged a revision of its rules in order to secure more prompt and effective action.<sup>49</sup>

The Coolidge administration continued its general policy of non-interference with business, and, except for the farmers, the country enjoyed widespread prosperity. Some progress was made in the settlement of European debts, although American opinion was divided on this question. Taxpayers in general believed that

<sup>48</sup> See Coolidge's "Enemies of the Republic: the Reds in the Women's Colleges," in *Delineator* (June, July, Aug., 1921).

<sup>49</sup> L. Rogers, *The American Senate* (1926).

they should secure relief by the payment of the European debts. On the other hand there was a widespread propaganda for their cancellation in whole or in part. This attitude was based partly on sentimental grounds, partly on the opposition of bankers who wished to float loans abroad, and on the fear of manufacturers that payment in goods would interfere with American production. The United States continued to take active part in European conferences and in 1926 agreed, with reservations, to join the World Court. Considerable controversy was aroused over even this slight participation in world organization, and the conditions laid down by the United States were rejected by the leading nations. In other parts of the world our foreign policy was more vigorous. Marines were sent to Nicaragua to prevent a revolution which might interfere with American interests in that country. In Mexico a controversy over the application of her land laws to American owners and lessees led the President to state clearly the policy that the United States would protect the claims of its citizens. At present, aside from the question of farm relief, and of our relations with foreign countries, political issues are relatively quiescent. To a large degree religious and social issues, such as evolution and prohibition, have supplanted political issues in public interest and discussion.

Bryan devoted his later years to leading the fundamentalist crusade against the teaching of evolution. Extensive discussion of this issue took place in many state legislatures, and in a few states legislation was passed placing restrictions upon scientific instruction. While prohibition has been an active issue in state and local campaigns, party leaders have attempted to avoid raising the issue on a national scale because of the danger of disrupting party organization. The growth of intolerance and the attempt to enforce standardized opinions on dissenting minorities has been noted by many observers. Charles E. Hughes said:<sup>50</sup> "The most ominous sign of our times, it seems to me, is the indication of the growth of an intolerant spirit. . . . The interests of liberty are peculiarly those of individuals and hence of minorities, and freedom is in danger of being slain on her altars if the passion for unity and control of opinion gathers head." President Coolidge, referring to the same danger, said:<sup>51</sup> "It is the ferment of ideas, the clash of disagreeing judgments, the privilege of the individual to develop

<sup>50</sup> In a speech before the American Bar Association, Aug., 1925.

<sup>51</sup> In a speech before the American Legion, Oct. 6, 1925.

his own thought and shape his own character, which makes progress possible.”

## 2. REFORM IN PARTY ORGANIZATION AND METHODS

Although the party system early became a characteristic feature of American political life, a critical study of its nature and philosophy made little progress until the twentieth century. In his Farewell Address, Washington attacked party spirit, believing that excess of factionalism destroyed patriotism and weakened the state. A generation later, Webster and Calhoun protested against the creation of parties based upon patronage and the spoils system. Some attention to the party system was given in the description of American democracy written by the distinguished Frenchman, de Tocqueville.<sup>52</sup> After the Civil War a wave of moral reform attacked the corruption of the period, and attention was directed to the evils of “boss” and “machine” politics.<sup>53</sup> It was believed that if good men would take more interest in public affairs, the activities of the wicked politicians could be curbed. Some attention was also given to the effects of immigration and of city growth upon the party system, and to the connection between politics and big business. On the other hand, the system of machine politics was defended as necessary and desirable, and as a natural result of democratic government.<sup>54</sup>

The first systematic study of the American party system was made by an English observer, James Bryce.<sup>55</sup> Bryce held that the parties existed to crystallize public opinion, and that their evils resulted from the low level of the electorate and from the complexity of the governmental system. After Bryce wrote, numerous American writers, influenced partly by the growth of a systematic study of political science, and partly by the reform movements of the period, attempted to interpret the party system and to build up a philosophy of practical politics. One able group believed that the party existed as an agency of government to coördinate the decentralized organs under our system of separation and division of powers. The party arose as an extra-governmental agency to

<sup>52</sup> *Democracy in America* (1831-1835).

<sup>53</sup> T. Roosevelt, *Essays in Practical Politics* (1888); W. M. Ivins, *Machine Politics* (1897).

<sup>54</sup> D. N. Thompson, *Politics in a Democracy* (1893).

<sup>55</sup> *The American Commonwealth* (1888). In his *Modern Democracies* (1921), Bryce modified his earlier views.

secure responsibility and centralized leadership, which our system of checks and balances made impossible in the legal structure itself.<sup>56</sup> A double system of government was thus created: a decentralized and irresponsible legal organization, and a centralized extralegal organization which controlled the former. Other writers interpreted the party as a group held together, not by principles and policies, but by the desire to secure public office. Its main purpose was to control nominations and elections, and act as a "broker" between the electorate and the candidates. Its chief function was to put its leaders into office.<sup>57</sup> President Lowell expressed this point of view when he said that "the essential function of party in the United States lies not so much in presenting alternatives on public questions, as in presenting alternative candidates for election."<sup>58</sup>

Another group, interested especially in the reform of existing conditions, interpreted the party as the logical growth of our economic system and the means by which business interests attempted to secure control of the government. They held that the rise of the "boss" and the "machine" was the result of a corrupt alliance between political and economic leaders. Reform in economic as well as in political organization was necessary.<sup>59</sup> This point of view was emphasized by the Socialists, who held that a small group of capitalists controlled both the political and the industrial organization of society. The value of the party as a nationalizing influence was also pointed out. Political organization, based on national issues, tended to break down sectionalism, to merge religious and social differences, and to serve as an educational influence in creating a common American spirit.<sup>60</sup> On the other hand, it was pointed out

<sup>56</sup> H. J. Ford, *Rise and Growth of American Politics* (1898); F. J. Goodnow, *Politics and Administration* (1900); W. Wilson, *Constitutional Government* (1908), Ch. VIII; H. Croly, *Progressive Democracy* (1914), Ch. XVI; E. Root, "The Function of Political Parties as Agencies of the Governing Body," in *Addresses on Government and Citizenship* (1916).

<sup>57</sup> A. C. McLaughlin, *The Courts, the Constitution, and Parties* (1912); A. L. Lowell, *Public Opinion and Popular Government* (1913).

<sup>58</sup> *Public Opinion in War and Peace* (1923), 194.

<sup>59</sup> L. Steffens, *Struggle for Self-Government* (1906); *The Shame of the Cities* (1904); H. George, Jr., *The Menace of Privilege* (1905); J. J. Chapman, *Causes and Consequences* (1899); J. Addams, *Democracy and Social Ethics* (1902); H. D. Lloyd, *Wealth Against Commonwealth* (1894); W. J. Ghent, *Our Benevolent Feudalism* (1902); W. Weyl, *The New Democracy* (1912), Ch. IX; T. Veblen, *The Theory of Business Enterprise* (1904).

<sup>60</sup> J. Macy, *Party Organization and Machinery* (1904); W. M. Sloane, *Party Government in the United States* (1914); A. Shaw, *Political Problems of American Development* (1907), Ch. VI; M. Storey, *Problem of Today* (1920), Ch. I; A. Johnson, "Nationalizing Influence of Party," in *Yale Review*, XV, 283-292 (Jan., 1926); W. G. Brown, "Defense of American Parties," in *Atlantic Monthly*, CVI, 577 (Nov., 1910).



that sectional economic interests have been the dominant factors in creating political issues and political party contests.<sup>61</sup> Some writers attacked the two-party system, believing it to be unnatural, and urged the formation of groups based on identity of interests.<sup>62</sup>

Attention was also given to the psychology of politics, to the means of influencing public opinion, and to the qualities that made for political leadership.<sup>63</sup> In a more detached and impartial spirit, numerous histories of American party development and descriptions of American party organization and functions were written.<sup>64</sup>

Throughout American history two opposing conceptions of the function of parties have been held. To one group the party was the agency by which selected representatives governed the nation. This point of view was derived from England. It emphasized men rather than issues, and believed that the "natural aristocracy" should control the government. This view was held by the Federalists in the early period and by the Whig coalition in the middle of the

<sup>61</sup> C. A. Beard and M. R. Beard, *Rise of American Civilization* (1927); A. N. Holcombe, *The Political Parties of Today* (1924); F. J. Turner, "Sections and Nation," in *Yale Review*, XII, 1-21 (Oct., 1922).

<sup>62</sup> M. Ostrogorski, *Democracy and the Organization of the Party System* (1902); A. F. Bentley, *The Process of Government* (1908); J. N. Larned, "A Criticism of Two-Party Politics," in *Atlantic Monthly*, CVII, No. 3 (Mar., 1911).

<sup>63</sup> W. Lippmann, *A Preface to Politics* (1914), *Public Opinion* (1922); W. B. Munro, *Personality in Politics* (1924); I. Babbitt, *Democracy and Leadership* (1924).

<sup>64</sup> C. E. Merriam, *The American Party System* (1922); P. O. Ray, *Political Parties and Practical Politics* (1913); E. M. Sait, *American Parties and Elections* (1927); E. E. Robinson, *The Evolution of American Political Parties* (1924); J. A. Woodburn, *Political Parties and Party Problems* (1914); A. D. Morse, *Parties and Party Leaders* (1923); E. Stanwood, *History of the Presidency* (1912, 1916); R. C. Brooks, *Political Parties and Electoral Problems* (1923); W. M. Sloane, *Party Government in the United States* (1914); J. Macy, *Party Organization and Machinery* (1904); B. Whitlock, *Forty Years of It* (1914). For a discussion of political organization and methods in fiction, see B. Whitlock, *The Gold Brick* (1910); P. L. Ford, *The Honorable Peter Sterling* (1894); A. H. Lewis, *The Boss* (1900); H. R. Miller, *The Man Higher Up* (1910), *His Rise to Power* (1911); T. Dreiser, *The Financier* (1912), *The Titan* (1914); W. Churchill, *Coniston* (1906), *Mr. Crewe's Career* (1908), *A Far Country* (1915), *The Dwelling Place of Light* (1917); D. Richberg, *A Man of Purpose* (1922); B. Tarkington, *The Gentleman from Indiana* (1905), *In the Arena* (1905); S. Blythe, *The Price of Place* (1913), *The Fakers* (1915); W. A. White, *A Certain Rich Man* (1909), *The Old Order Changeth* (1910); E. Poole, *The Harbor* (1915); H. S. Harrison, *Queed* (1911); F. Norris, *The Octopus* (1909), *The Pit* (1911); R. Herrick, *The Common Lot* (1904), *A Life for a Life* (1910), *The Web of Life* (1900); H. Day, *The Ramrodders* (1910); J. A. Altsheler, *Guthrie of the Times* (1904); J. K. Friedman, *The Radical* (1898); H. Garland, *A Spoil of Office* (1892); F. Lynde, *The Grafters* (1904); B. B. Lindsey, *The Beast* (1910); E. B. Bohan, *The Drag Net* (1909).

nineteenth century. To a considerable extent it dominates the Republican party to-day.<sup>65</sup> The other group believed that the party was the agency by which the mass of the people were enabled to govern themselves. This point of view was more distinctly American, and resulted from the frontier conditions and the pioneer demands for liberty and equality. It was upheld by Jefferson, further expanded by Jackson, and reappeared in the various Populist movements and in the more radical wing of the Democratic party.<sup>66</sup> In a sense this alignment has been enduring, resulting from the conditions that have made America, and from the tendency of one class to depend upon leaders and for the other to trust the people.

The growth of party organization and the widespread activities of the parties in American government were a conspicuous feature of the latter part of the nineteenth century. The party followed the general tendency of the times toward concentration and centralization of power. As business developed the corporation and the "captain of industry," and as labor developed the union and the labor leader, so the party developed its "machine" and "boss."<sup>67</sup> Under the growing industrial and urban conditions, the leaders of the parties were often more important in government than the nominal holders of office. Arising as an extralegal association, outside the constitutional system, the extensive organization and the increasing powers of the party were at first not realized nor given much attention in American political thought. As public opinion began to understand the situation toward the close of the century, efforts were made to reform the parties in various ways. At first efforts were directed mainly to the overthrow of the "machine," by appealing to the voters to take control of the party and to make it more democratic. Later, the government, especially of the states, attempted to regulate the party by statutes and to make it a legal and recognized part of the constitutional system. Meantime, the connection between government and industry was becoming better understood, and the party was interpreted as a logical result of the politico-economic system. Efforts were then made to break down the indirect influence of big business in politics, and to attack "graft" and the "lobby." Throughout the period there was little attack upon the parties themselves. In contrast to the attitude of the

<sup>65</sup> Note the Republican appeal for guidance by the "best minds" in the campaign of 1920.

<sup>66</sup> Note Bryan's query, "Shall the people rule?" in 1908.

<sup>67</sup> H. F. Gosnell, *Boss Platt and the New York Machine* (1923).

framers of the Constitution, who looked upon parties as an evil to be avoided, American political thought had come to accept party organization and leadership as essential to the democratic process. The party was to be reformed or incorporated into the governmental system, not to be destroyed.

There was, however, some movement toward independent and nonpartisan voting <sup>68</sup> and, especially in the cities, toward the formation of minor groups <sup>69</sup> which attacked the principle of strict allegiance to the two major organizations. Opponents of the two-party system argued that the two major parties differ but slightly on issues, that they avoid definite statements of policy, that they are interested only in securing office, and that the conscientious citizen, therefore, unable to find means of expressing his real opinions, turns from politics in disgust. They favored numerous groups representing real issues. On the other hand, the supporters of the two-party system argued that it made for political stability and that it was inextricably woven into our governmental system. <sup>70</sup> They believed that the multi-party system would intensify class, racial, or sectional feelings, would lead to corrupt bargainings among the groups, and would have a disintegrating effect upon politics and upon national unity.

The earliest effort at reform was an attack upon the "spoils system," which became prominent under President Jackson. Jackson believed that experience was not necessary for office-holding, that long tenure was undesirable, and that public offices should be used as rewards for party services. <sup>71</sup> He feared the creation of a powerful bureaucracy, and argued that long tenure led to laxness and corruption. Many agreed with Jackson that the spoils system was democratic, that it enabled many of the poorer citizens to serve the country, and that, without patronage, parties could not exist. Spoilsmen glorified their practice as "the American system," and defined civil service reform, or, as they called it, "snivel service reform," as "the Chinese system." Early attacks on the spoils theory were made by Calhoun and Webster, <sup>72</sup> but not until after

<sup>68</sup> J. R. Lowell, "The Independent in Politics," in *Literary and Political Addresses* (1881), VI, 190.

<sup>69</sup> F. E. Haynes, *Third Party Movements* (1916).

<sup>70</sup> For example, in the method of electing the President.

<sup>71</sup> See his first message to Congress.

<sup>72</sup> *Congressional Debates*, XI, 459. Webster said: "The patronage of office, the power bestowing place and emoluments, create parties not upon any principle or upon measures, but upon the single ground of personal interest." Calhoun said: "Were a premium offered for the best means of extending to

the Civil War, with its enormous expansion of governmental expenditures and its increase in the number of governmental officials, did the reform movement make progress. The Democratic platform of 1868 demanded "reform of abuses in the administration, the expulsion of corrupt men from office, the abrogation of useless services." Four years later both parties declared civil service reform to be necessary.

The leader in the civil service reform movement was G. W. Curtis.<sup>73</sup> He was ably assisted by Carl Schurz,<sup>74</sup> E. L. Godkin, Horace White, and D. B. Eaton. A similar movement had made progress in England. Aroused by conditions in the administrative service, both in India and at home, English leaders attacked the abuses of the patronage system. D. B. Eaton was sent to England by President Hayes to study conditions there; and his report, issued as a public document,<sup>75</sup> aroused great interest and contributed to the success of the reform movement in the United States. However, it was not until President Garfield was assassinated by a disappointed office seeker that the reformers were backed by a public opinion that made their program irresistible. The Pendleton Act of 1883 was the beginning of real civil service reform; and, extended by later acts, and by executive orders bringing additional offices under the classified service, it remains as the foundation of the merit system.<sup>76</sup> It provided for "open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder." The movement spread from the national government to the states and the cities, but has made little progress in the counties.

After more than forty years of experience with civil service reform, opinion is still divided concerning its strength and weakness. Its opponents claim that examinations are too "academic" and favor persons with "book knowledge" only. It is also argued that while civil service tests may be applied successfully for clerical and technical positions, they are not suited for positions of professional and discretionary character. Their artificial and mechanical tendencies are considered too rigid for the flexible re-

the utmost the power of patronage, to destroy the love of country, and to substitute a spirit of subserviency and man worship, to encourage vice and discourage virtue, no scheme more perfect could be devised."

<sup>73</sup> C. E. Norton, ed., *Orations and Addresses of G. W. Curtis*.

<sup>74</sup> *Proceedings of National Civil Service Reform League* (1894), pp. 7-37.

<sup>75</sup> *House Exec. Docs.*, 46th Congress, 2nd sess., XII, No. 1, Pt. 7.

<sup>76</sup> W. D. Foulke, *Fighting the Spoilsman* (1919); C. R. Fish, *Civil Service and Patronage* (1905).

quirements of public service. Many object to the provision that civil service officials must not take active part in politics, and believe that responsible interest in public issues is preferable to repression and restriction. Objection is also made to the tendency toward organization among public employees along the lines of the labor unions, and the activity of such organizations in using political pressure to secure higher wages and more favorable terms of service.<sup>77</sup> The chief argument against civil service reform has been the democratic fear of an aristocratic bureaucracy. The merit system was opposed as an un-American device, borrowed from England. Wendell Phillips declared that the new system was contradictory to the "fundamental plan of our institutions, and contemplates a coterie of men held long in office largely independent of the people—a miniature aristocracy filled with a dangerous *esprit de corps*."<sup>78</sup> In general, however, public opinion looked with increasing disfavor on the spoils system, believing that it placed personal and party ends above public interest, and that democracy was entitled to efficient servants to carry out the public will.

The other main line of reform took the direction of legal regulation of the party system. Arising as voluntary associations, outside the regular government, the parties were gradually recognized and regulated by law. This process took various forms. The earlier election laws were brief and simple. They fixed the qualifications for suffrage,<sup>79</sup> provided for election districts and the selecting of election officials, and prohibited bribery, intimidation, fraudulent voting or counting of votes, defacing or destruction of ballots, and betting on elections. With the growth of the prohibition movement, laws were passed forbidding the use of saloons as polling places, and the sale of liquor on election day. Registration of voters and some form of written or printed ballot were required. These laws, however, ignored the existence of political parties as such. Beginning in 1888, the parties were gradually recognized and defined by law, and their activities in nominations and elections were brought under increasing state control. This process took the form of regulation of the ballot under the Australian ballot law, provision for direct primaries under state control, and the passage of Corrupt Practices Acts to regulate the financial methods of candidates and parties.

A number of the states originally followed the English tradition

<sup>77</sup> W. H. Taft, *Our Chief Magistrate and His Powers* (1916), p. 66.

<sup>78</sup> In his Phi Beta Kappa address at Harvard, in *Speeches* (1871), II, 363.

<sup>79</sup> K. H. Porter, *History of Suffrage in the United States* (1918).



of oral or *viva voce* voting. This method was defended as the only manly way of voting, and as enabling intelligent citizens to guide the more ignorant voters. On the other hand, ballots were early demanded as necessary to preserve the independence of the laboring classes against their influential neighbors, and as affording a record in case of disputed elections. The controversy between open and secret voting lasted into the nineteenth century,<sup>80</sup> but the ballot system finally prevailed. At first the ballots were provided by the candidates or by party committees, but this method was conducive to fraud, and made secrecy difficult. Under the Australian ballot system,<sup>81</sup> introduced in 1888 and now practically universal, the state placed the whole process of election under close supervision. It defined and regulated the parties, prepared a uniform ballot, provided for secrecy, and passed numerous laws to prevent bribery, intimidation, and fraud.

The Australian ballot system was opposed at first, laws providing for it were vetoed by some governors, and the constitutionality of such laws was attacked in the courts as unwarranted interference with the rights of private associations. The courts upheld the laws as reasonable regulations to protect the purity of the ballot and the conduct of elections. In some states the ballots are of the party-column type, making it easy to vote a straight party ticket; in others the candidates are arrayed by offices, for the purpose of encouraging thoughtful and independent voting.<sup>82</sup> The use of voting machines has been authorized in a number of states. They offer the advantage of secrecy, speed, and accuracy. Their opponents hold that the machines are expensive, that they get out of order, and that the timidity of voters when faced with unfamiliar machinery encourages straight-ticket voting.

In recent years an effort has been made to provide voting facilities for those who are absent from home on election day. This movement was given an impetus by the desire to enfranchise citizens absent on military and naval service during the World War. At the present time most of the states make some provision for absent voting. Few voters avail themselves of this right.

<sup>80</sup> Virginia used the *viva voce* method until the Civil War; Kentucky until 1891.

<sup>81</sup> E. C. Evans, *History of the Australian Ballot System in the United States* (1917); A. C. Ludington, *American Ballot Laws* (1888-1910); J. H. Wigmore's *The Australian Ballot*, published in 1889, gave a decided impetus to the movement.

<sup>82</sup> P. L. Allen, "Ballot Laws and Their Workings," in *Political Science Quarterly*, XXI, 38-58 (Mar., 1916).



Alarmed by the failure of voters to take part in elections,<sup>83</sup> some opinion has favored compulsory voting. In colonial times such laws existed,<sup>84</sup> and the device has been tried in several of the smaller European states, in Latin America, and in New Zealand and Australia. Several American states amended their constitutions to permit the introduction of the compulsory system, but in general the idea is not favored. Many believe that it would cause the citizen to view his political rights as a burden rather than as a privilege. Various organizations have been formed in recent years to arouse public opinion and persuade voters to go to the polls.<sup>85</sup>

The nominating process was at first the work of a caucus of leading party members, especially in Congress and the state legislatures; later it was taken over by conventions formed of party delegates. This system was not disturbed until the early years of the present century, although frequent examples of violence and fraud led to a growing demand for state regulation, and numerous laws were passed in the latter half of the nineteenth century for the purpose of regulating nomination methods.<sup>86</sup> After 1880 several writers advocated a direct primary;<sup>87</sup> in the late nineties the movement was taken up by LaFollette,<sup>88</sup> and later it received support from such influential leaders as Bryan, Roosevelt, Hughes and Wilson.<sup>89</sup> The direct primary movement represented in part opposition to "boss" and "machine" control, in part resentment against the influence of special interests over the nominating machinery, but in the main the feeling that the party organization had become undemocratic, and that direct popular choice should control the selection of candidates. The movement was opposed by the party managers and by conservative thinkers.<sup>90</sup> They argued that it would destroy the party system, would impose heavy burdens and ex-

<sup>83</sup> C. E. Merriam and H. F. Gosnell, *Non-Voting: Causes and Methods of Control* (1924).

<sup>84</sup> A. E. McKinley, *The Suffrage Franchise in the Thirteen Colonies* (1905), pp. 73, 270, 308, 430.

<sup>85</sup> For example, the Get-out-the-Vote Club, organized in 1924. See *Literary Digest*, Aug. 23, 1924, p. 15.

<sup>86</sup> E. C. Meyer, *Nominating Systems* (1902).

<sup>87</sup> McMillan, *Elective Franchise* (1880); D. B. Eaton, *The Independent Movement in New York* (1880); G. W. Lawton, *The American Caucus System* (1885); A. Stickney, *Democratic Government* (1885).

<sup>88</sup> See his "The Menace of the Machine," in *Univ. of Chicago Record* (1897).

<sup>89</sup> *Proceedings of Conference of Governors* (1910).

<sup>90</sup> W. H. Taft, *Popular Government* (1913), Ch. V; N. M. Butler, *Why Should We Change Our Form of Government?* (1912); H. J. Ford, "The Direct Primary," in *North American Review*, CXC (1909).

penses upon the electorate and upon the candidates, would result in the selection of inferior men, and would increase the corruption it sought to avoid.

Between 1903 and 1915 the direct primary movement made rapid progress. It was incorporated into the general "progressive" philosophy of the period. "Muckraking" magazine articles piled up evidence of scandals in party methods, and public opinion, especially in the West, proclaimed a return to the precepts of Jacksonian democracy. Direct, rather than representative, government was emphasized; and the direct primary was demanded along with women's suffrage, the initiative, referendum, and recall, and the direct election of Senators. At present all but four states make some provision for direct nominations, although there are wide differences among the states as to the kind and number of offices brought under the system, and as to the method of conducting primary elections. The convention system survives for the nomination of President and Vice-President; although some thinkers, including President Wilson in 1913,<sup>91</sup> have advocated a national primary for those offices. Presidential preference primaries or the direct election of delegates to the national convention are provided for in about half the states.<sup>92</sup>

The practical operation of the direct primary is still a subject of discussion, and wide variation of opinion exists as to its success.<sup>93</sup> To some extent faith in the direct primary has declined and the enthusiasm of its supporters has cooled. The reaction against it was successful in recent years in reestablishing the convention system in several states and in repealing the presidential primary laws in several others. The expense it entails and the advantage it gives to wealthy candidates have led to nation-wide scandals. Many doubt whether it results in the selection of candidates of high average caliber. The total vote cast is often small and minority candidates are selected. On the other hand, it places a weapon in the hands of party voters which they can use in case of need, and it gives to

<sup>91</sup> See his message to Congress.

<sup>92</sup> R. S. Boots, "The Presidential Primary," in *Supplement to National Municipal Review*, Sept., 1920; L. E. Aylsworth, "Presidential Primary Elections," in *American Political Science Review*, VI, 429-433 (Aug., 1912).

<sup>93</sup> C. E. Merriam, *Primary Elections* (1908); R. S. Boots, *Direct Primaries* (1917); C. E. Fanning, *Selected Articles on Direct Primaries* (4th ed., 1918); J. D. Miller, "The Failure of the Primary," in *Forum*, I, 48-58; W. B. Shaw, "Direct Primary on Trial," in *Outlook*, XLI, 497-499; R. S. Boots, "The Direct Primary Weathers the Storm," in *National Municipal Review*, X, 322-324 (June, 1920); E. C. Hughes, "The Fate of the Direct Primary," in *National Municipal Review*, X, 23-31 (Jan., 1921).

the voters a sense of responsibility and security. At present there is little likelihood of a widespread repeal of direct-primary laws. In spite of the practical defects of the system and of its heavy burdens, it retains the support of a large part of public opinion as a useful means of defeating the machine at least occasionally. Many believe that the adoption of the short-ballot reform would remove some of the worst evils of the system.

Beginning in 1890 the states attempted to regulate party expenditures by means of Corrupt Practices Acts. It was widely believed that parties and candidates were unduly influenced by the corrupt use of money on the part of individuals or corporations.<sup>94</sup> At first these laws imitated the English Act of 1883.<sup>95</sup> They aimed to secure publicity of campaign contributions and expenditures, to prohibit or limit campaign contributions, to define legitimate and illegitimate forms of expenditure, and to limit the total amount to be expended.<sup>96</sup> By the end of the century seventeen states had made some effort to regulate campaign expenditures. In 1906 the New York Publicity Law Organization was formed, and a few months later the National Publicity Law Organization was created.<sup>97</sup> From this time the movement grew steadily. In 1907 a federal law prohibited contributions from corporations; and in 1910 and 1911 comprehensive federal laws provided for publicity, and fixed a maximum expenditure for the nomination and election of Senators and Representatives.

Great controversy arose over the attempt of the federal government to regulate expenditures in primary campaigns. The question whether primaries were elections, within the meaning of the Constitution, was bitterly debated in Congress<sup>98</sup> and was finally taken to the Supreme Court in the famous *Newberry Case*.<sup>99</sup> Four justices held that Congress had no authority over primaries; four upheld the authority of Congress to regulate primaries; and one

<sup>94</sup> H. Croly, *Marcus Alonzo Hanna* (1912), Ch. XVI-XXI; T. Williams, "High Cost of Elections," in *Century*, CII, 409 (July, 1921). For expenditures in the presidential election of 1920, see report of the Kenyon Committee, *Senate Report*, No. 883, 66th Congress, 3rd sess. (1921).

<sup>95</sup> A. L. Lowell, *The Government of England* (1908), I, 221-238.

<sup>96</sup> H. J. Ford, *Rise and Growth of American Politics* (1900), Ch. XXIV; G. L. Fox, "Corrupt Practices and Election Laws in the United States Since 1890," in American Political Science Association, *Proceedings* (1905); J. K. Pollock, Jr., *Campaign Funds* (1926).

<sup>97</sup> The impetus to these movements was given by P. Belmont's "Publicity of Election Expenditures," in *North American Review*, CLXXX, 166-185 (1905).

<sup>98</sup> *Congressional Record*, June 20, 1911, 2310-2319; Aug. 17, 4084-4102.

<sup>99</sup> *Newberry v. U.S.*, 256 U.S., 232 (1921).

held that Congress had no authority over Senatorial primaries before the adoption of the seventeenth amendment, but reserved his opinion as to its power after the amendment. The first group construed the term "election" broadly to include the entire process of selection; the second group construed it strictly, and viewed the primary as a method by which the party agreed upon a candidate, rather than as a part of the election. The federal Corrupt Practices Act of 1925 applied exclusively to elections, but the scope of Congressional authority over primaries is still somewhat uncertain. While the provisions of Corrupt Practices Acts can be evaded, publicity requirements have stimulated the interest of voters in campaign expenditures. The candidacies of Governor Lowden and General Wood were wrecked in the Republican convention of 1920 largely because of the revelation of large expenditure in their interest.

Several additional remedies for the evils of campaign financing have been suggested by prominent politicians. President Roosevelt<sup>100</sup> proposed an appropriation of public money for the use of parties. He said: "The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties." This plan was not favored in Congress; but a Colorado statute in 1910 provided for public appropriations for party expenditures. This law was declared unconstitutional by the supreme court of the state.<sup>101</sup> It has also been suggested that official bulletins, published at government expense and distributed free to the voters, should be furnished during campaigns.<sup>102</sup> This plan was favored by W. J. Bryan in 1920. He urged the Democratic convention to adopt a plank favoring "a bulletin issued by the federal government, under the fair and equitable control of the two leading parties, such bulletin to furnish information as to the political issues of the campaign, editorial space and space for the presentation of claims of candidates proportionately divided between the parties." This proposal was defeated in the convention. Bainbridge Colby, in opposing it, said that the *Congressional Record*, which presents the case of both parties, is "the most widely unread newspaper in the world." A number of states, however, issue publicity pamphlets in connection with primary elections or with measures

<sup>100</sup> In his message of 1907.

<sup>101</sup> *McDonald v. Galligan* (1911).

<sup>102</sup> J. Mackaye, "The Substitute for the Campaign Fund," in *Independent*, LXIV, 1142 (1908).

referred to a popular referendum. Privately endowed newspapers have also been suggested <sup>103</sup> as a remedy for the partisan attitude of the press on political issues.

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<sup>103</sup> E. A. Ross, *Changing America* (1912), p. 133.

492 HISTORY OF AMERICAN POLITICAL THOUGHT

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## CHAPTER XV

### FOREIGN POLICY AFTER 1898

#### 1. EXPANSION IN THE CARIBBEAN AND PACIFIC AREAS

New diplomatic interests developed rapidly in the latter part of the nineteenth century. A changed foreign policy resulted inevitably from the transformation of the United States from an importing nation, requiring foreign capital for its development, to an exporting nation, independent of foreign financial aid. The growth of American farm and factory production demanded foreign markets, and the accumulation of capital looked overseas for investment. The attention of business and of diplomacy was turned to the undeveloped regions, especially to those areas not yet penetrated by European enterprise. To these materialistic motives were added the traditional sympathy of the American people for oppressed and backward peoples and an enthusiastic belief in the uplifting influence of American institutions and ideals. Practical considerations and humane sentiments were combined. American foreign policy turned to the annexation of islands in the Pacific, to the promotion of investments and trade in the Orient, to the construction of an interoceanic canal, and to the furthering of commerce with Latin America.

In this process the United States was compelled to abandon her isolation policy and to assume her place as a world power in international relations.<sup>1</sup> The Monroe Doctrine, originally a political policy intended to prevent the extension of European governmental systems in the New World, became increasingly an economic policy. The investment of American capital in Latin America led to economic absorption in that area, and economic absorption in turn led to American intervention and to political control. The Monroe Doctrine was expanded to justify the establishment of American protectorates in countries whose financial vagaries might tempt foreign nations to interfere in their affairs, and to prevent foreign

<sup>1</sup>R. Olney, "Growth of Our Foreign Policy," in *Atlantic Monthly*, LXXXV, 290-301 (Mar., 1900).

investors from acquiring concessions in Latin America that might lead to political control. The growing importance of oil, especially on the high seas, brought it into the realm of diplomacy.

The war with Spain in 1898 marked the end of the political, economic, and financial reconstruction that followed the Civil War. For a half-century questions of foreign policy had lain dormant and internal issues had demanded consideration. Expansion to the south, advance into the Caribbean, and the construction of an Isthmian canal were policies that had received support in the middle of the century, but had been supplanted by the pressing issues of slavery and internal economic expansion. The Spanish War reopened these questions and pushed them into the foreground. Earlier policies in the Pacific were also resumed. The Hawaiian Islands were annexed and the Philippines were acquired, bringing the United States into the storm center of Oriental politics. Expansion in the Caribbean and in the Pacific made inevitable the construction of an interoceanic canal and the building of a large navy. This expansion created further opposition among Latin American peoples, already alarmed by the widened application of the Monroe Doctrine.

The Spanish War resulted from American interest in Cuba, where an insurrection broke out in 1895. Public opinion in the United States was aroused by the execution of policies which excited sympathy for the unfortunate inhabitants of the island and which paralyzed its industries and interfered with its commerce. American capital to the amount of at least fifty millions was invested in Cuba, and our commerce with the islands, especially in sugar, amounted to more than one hundred millions annually. In his last annual message to Congress, President Cleveland declared: "When the inability of Spain to deal successfully with the insurgents has become manifest and it is demonstrated that her sovereignty is extinct in Cuba for all purposes of its rightful existence, and when a hopeless struggle for its reestablishment has degenerated into a strife which means nothing more than the useless sacrifice of human life and the utter destruction of the very subject-matter of the conflict, a situation will be presented in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge." When the battleship *Maine* was blown up in Havana harbor, American public opinion clamored for war. Considerable influence was exerted by the new type of lurid journalism that was

coming into prominence under the direction of Pulitzer and Hearst.<sup>2</sup>

In his message to Congress of April 11, 1898, President McKinley suggested forcible intervention, and two days later the House by an overwhelming majority passed a resolution directing the President to intervene for the purpose of "establishing by the free action of the people thereof a stable and independent government of their own in the island." On April 19, a joint resolution of Congress recognized the independence of Cuba, demanded the withdrawal of Spanish authority from the island, authorized the President to use force to accomplish this purpose, and stated that "the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people."<sup>3</sup> Foreign public opinion, except in England,<sup>4</sup> was hostile to the United States, but after decisive American victories on land and sea, both the American and the European press demanded peace. In the protocol, Spain agreed to relinquish sovereignty over Cuba, cede Porto Rico and one of the Ladrões to the United States, and leave to the peace commission the disposition of the Philippines.

Sharp differences of opinion appeared on the problems of colonization and imperialism. On the one hand the doctrine of the "consent of the governed" was applied and it was argued that no territory should be held by the United States against the wishes of its people. To hold people in subjection against their will not only would violate their rights but also would demoralize democracy at home. It would inaugurate a policy of imperialistic expansion incompatible with free government, and would lead to a demand for military and naval expansion that might provoke further wars. Many Americans believed that the safety of democracy demanded the preservation of the policy of isolation.<sup>5</sup> On the other hand, the policy of overseas expansion was vigorously de-

<sup>2</sup> S. Brooks, "The Significance of Mr. Hearst," in *Fortnightly Review*, LXXXVIII, 919 (Dec., 1907).

<sup>3</sup> *U.S. Statutes at Large*, XXX, 738.

<sup>4</sup> The attitude of England, fearful of the growing ambitions of Germany, did much to bring about closer relations between England and the United States.

<sup>5</sup> W. J. Bryan, *Speeches*, II (1900); D. S. Jordan, *Imperial Democracy* (1901); C. F. Adams, *Imperialism* (1899); C. Schurz, *American Imperialism* (1899).

fended. If a people were not capable of self-government, they must be held as wards by a more advanced nation and educated in political and industrial methods until they were competent to stand alone. Many were interested in the expansion of American trade, and the theory that commerce follows the flag was widely used. The possession of a naval base to protect our interests in China appealed to many. Doctrines of international duty and responsibility were put forward, and the mission of the United States to extend efficient government and democratic principles was proclaimed.<sup>6</sup> Americans began to think in international terms, and to realize that they had grown to a position of importance in world politics.<sup>7</sup>

At least three of the five American commissioners who drew up the peace treaty were ardent imperialists, and American public opinion was swept along in a wave of enthusiasm for overseas expansion. Judge Gray, representing the Democratic minority in the commission, protested, saying that he would not "agree that it is wise to take the Philippines in whole or in part. To do so would be to reverse the accepted continental policy of the country declared and acted upon throughout its history. . . . We should set an example in these respects, and not follow the selfish and vulgar greed for territory which Europe has inherited from medieval times."<sup>8</sup> Secretary of State Hay, however, informed the commission that "the sentiment in the United States is almost universal" that we should acquire the islands. President McKinley, who was always responsive to public opinion, was finally convinced that the islands could not be turned back to Spanish misgovernment, could not be allowed to fall into the hands of Germany, which was eager to secure them, and could not be left to the natives, who were unfit for self-government. He denied that there had originally been any intention of conquest in the Pacific, but declared that the march of events had imposed new duties upon us. He added that "incidental to our tenure in the Philippines is the commercial opportunity to which American statesmanship cannot be indifferent. It is just to use every legitimate means for the enlargement of American trade." He finally decided that "there is nothing left for us to do

<sup>6</sup>F. J. Giddings, *Democracy and Empire* (1900); R. G. Usher, *The Challenge of the Future* (1916).

<sup>7</sup>J. H. Latané, *America as a World Power* (1907), *From Isolation to Leadership* (1918); A. C. Coolidge, *The United States as a World Power* (1908).

<sup>8</sup>*Foreign Relations* (1898), p. 934.

but take them all, and educate the Filipinos, and uplift and civilize them as our fellow men for whom Christ also died." When the peace treaty was submitted to the Senate, opposition led by Senator Hoar declared that the acquisition of the Philippines was in violation of the Declaration of Independence, the Constitution, and the whole spirit of American institutions. Democrats demanded self-government in the islands "in recognition of the principles of the immortal Declaration of Independence"; Republicans made lofty references to "the mysterious hand of Providence which laid this burden upon the Anglo-Saxon Race." Senator Platt said: "Every expansion of our territory has been in accordance with the irresistible law of growth. We could no more resist the successive expansions by which we have grown to be the strongest nation on earth than a tree can resist its growth. The history of territorial expansion is the history of our nation's progress and glory." Democratic opposition to the treaty was finally prevented by Bryan, who advised ratification, saying that the status of the Philippines could be determined at the next presidential election. The issue of imperialism was thus made a political and partisan one, and to some extent it has divided the parties to this day.

Independence for the Philippines has been, in particular, a matter of political controversy. The Organic Act of 1916, upon which the government of the islands now rests, was the work of a Democratic Congress, and it asserted the intention of the United States to recognize the independence of the island "as soon as a stable government can be established therein." The Democratic platforms since that date have indorsed the principle of ultimate independence; the Republican platforms have taken the position that the islands are not fitted for independence and that our work there is not yet finished. When the Democratic governor-general, F. B. Harrison, retired from the islands in 1921, he reported to the President that the Filipinos had established a stable government and were entitled to independence. Special missions sent to the islands by Republican Presidents in 1921 and in 1926 reported that the islands were not yet ready for full self-government. Opinion in the islands is divided, one group favoring independence under American protection; another group preferring the present status. The policy of the United States is influenced, not only by the question of the political capacity of the Filipinos and their ability to maintain their independence, but also by the interests of American business in the islands, especially the possibilities of rubber develop-

ment, and by the international situation and our relations with the Orient.<sup>9</sup>

The United States kept its promise to grant independence to Cuba, but insisted on defining its future relations with that country. In spite of Cuban objection, the Platt Amendment was finally added as an appendix to the Cuban constitution and was embodied in a formal treaty with the United States. It provided that the government of Cuba should not enter into any agreement with a foreign power that might impair Cuban independence, nor permit any foreign power to secure control over any part of the island; that it should not contract any debts that the financial resources of the island could not meet; that the United States should have the right to intervene for the preservation of Cuban independence or for the maintenance of a government adequate for the protection of life, property, and individual liberty; and that Cuba should sell or lease to the United States lands on the island for coaling or naval stations.<sup>10</sup> Several times since the establishment of the Cuban Republic, the United States has intervened to stop revolution and bloodshed; but in each case it has withdrawn its authority as soon as peace was restored. In his message to Congress in 1906, however, President Roosevelt stated that while the United States had no desire to annex Cuba, it was "absolutely out of the question that the island should continue independent," if the "insurrectionary habit" should be "confirmed."

The acquisition of overseas possessions revived the important constitutional question of the powers of Congress over the territories, which had been so extensively debated during the slavery controversy. The issue of whether the "Constitution follows the flag" was widely discussed. Strict constitutionalists cited a long line of decisions which had affirmed the doctrine that Congress is limited everywhere, even in the territories, by the constitutional provisions for personal and property rights; practical politicians asserted that the Constitution and laws of the United States did not apply in the territories unless Congress specifically extended them to those areas. It was clearly established that the United States had the right to acquire new territory and that Congress possessed the

<sup>9</sup> For arguments in favor of Philippine independence, see M. M. Kalaw, *The Case for the Filipinos* (1916), *Self-Government in the Philippines* (1919); F. B. Harrison, *The Corner-Stone of Philippine Independence* (1922). For arguments against independence, see the report of the commission of 1921 in *Current History*, XV, 678-694, and the Thompson report of 1926, in *Current History*, XXV, No. 5 (Feb., 1927).

<sup>10</sup> *U.S. Statutes at Large*, XXXI, 897.



power to govern such territory. Certain precedents and principles, however, had grown up under the Northwest Ordinance and similar later provisions for dealing with newly acquired areas. The inhabitants of such territories had always been given citizenship, had been granted a large degree of self-government, had been granted all the civil liberties guaranteed by the Constitution, had enjoyed free trade with the other parts of the United States, and had expected ultimate statehood. Before 1898 all new territory, except Alaska, had been contiguous and had been settled by Americans or by European immigrants whose civilization and tradition were similar to our own. Hence Congress felt little hesitation in extending to them a large degree of self-government and all the civil rights provided for in the Constitution. The Spanish War, however, brought under American control non-contiguous, tropical territory, inhabited by backward peoples of different race, religion, and civilization, inexperienced in self-government and in the enjoyment of civil and political rights. If legislative and judicial precedents were followed, the results might be embarrassing, hence it was practically desirable to make a distinction between the legal status of the new acquisitions and that of the older territories.

In a series of decisions, known as the Insular Cases,<sup>11</sup> the Supreme Court modified its former doctrine and made a distinction between territory "incorporated" in the United States, and territory "not incorporated." In legislating for the former class, which included Alaska, Oklahoma, New Mexico, and Arizona, Congress was bound by all the limitations of the Constitution which were not clearly inapplicable. In legislating for the latter class, which included Hawaii, Porto Rico, and the Philippines, Congress was bound only by the "fundamental" parts of the Constitution, and not by the "formal" parts, which apply to unincorporated territories only when Congress specifically extends them. The unincorporated territories were declared to be possessions and dependencies of the United States, but not parts of it in the sense that the incorporated territories were. The court did not enumerate the distinctions between the fundamental and the formal parts of the Constitution, leaving that question to be determined in individual cases. In such cases it has decided that Congress is not bound by the requirement that taxes shall be uniform throughout the United

<sup>11</sup> *DeLima v. Bidwell*, 182 U.S., 1 (1901); *Dooley v. United States*, 182 U.S., 222 (1901); *Downes v. Bidwell*, 182 U.S., 244 (1901); *Fourteen Diamond Rings v. United States*, 183 U.S., 176 (1901); *Hawaii v. Mankichi*, 190 U.S., 197 (1903); *Dorr v. United States*, 195 U.S., 138 (1904).

States, but may impose a tax upon articles from the dependencies different from that imposed upon similar articles from foreign countries. It has held that the requirement of jury trial in criminal cases is not binding in Hawaii and the Philippines; and that the Act of annexation did not make the inhabitants of the dependencies citizens, a special Act of Congress being necessary for that purpose. The result of these decisions was to give Congress, in law, a considerable degree of freedom in dealing with the new type of territory, although, in practice, most of the rights guaranteed by the Constitution have now been extended to these areas.<sup>12</sup>

Our new policy of colonial imperialism revived interest in an Isthmian canal, and our position as a world power made it desirable that such canal should be wholly under American control. Earlier attempts to modify the Clayton-Bulwer treaty, by which England secured joint control over any canal that might be built, had proved unsuccessful. In 1896 Secretary Olney declared that "if changed conditions now make stipulations, which were once deemed advantageous, either inapplicable or injurious, the true remedy is not in ingenious attempts to deny the existence of the treaty or to explain away its provisions, but in a direct and straightforward application to Great Britain for a reconsideration of the whole matter." In this spirit the Hay-Pauncefote treaty,<sup>13</sup> ratified in 1901, was negotiated, authorizing the United States to construct a canal and to have exclusive control over it. Considerable difference of opinion existed as to the relative merits of the Nicaragua and Panama routes, and the financial interests concerned in the choice carried on active lobbies in the effort to influence Congress in favor of their projects. The Walker Commission reported in favor of the Nicaragua route,<sup>14</sup> but Congress finally authorized the President to purchase the rights of the French company that had attempted to build a Panama Canal and to negotiate a treaty with Colombia for control over the canal area. If these negotiations failed, the Nicaragua route was to be followed.

The rights of the French company were purchased, but the treaty with Colombia was held up by the senate of that country. This encouraged the advocates of the Nicaragua route to push its

<sup>12</sup> J. W. Burgess, "The Decisions in the Insular Cases," in *Political Science Quarterly*, XVI, 486-504 (Sept., 1901); L. S. Rowe, "The Supreme Court and the Insular Cases," in *Annals of American Academy of Political and Social Science*, XVIII, 226-250 (Sept., 1901).

<sup>13</sup> W. M. Malloy, *Treaties* (1910), I, 782-784.

<sup>14</sup> 57th Congress, 1st sess., *Senate Doc. No. 54*.

claims. President Roosevelt favored the Panama route, and the inhabitants of the Isthmus planned a revolution, hoping for American aid. In a personal letter to the editor of the *Review of Reviews*, President Roosevelt said: "I should be delighted if Panama were an independent state, or if it made itself so at this moment; but for me to say so publicly would amount to an instigation of a revolt, and therefore I cannot say it."<sup>15</sup> The revolt was staged, with the knowledge of the American Government, and the new *de facto* government was immediately recognized by the United States, Colombia being forbidden to make any attempt to put down the revolt. In his annual message in 1903 and in a special message in 1904, Roosevelt defended his action, holding that it was justified by our treaty rights, by our international interests, and by the interests of collective civilization. He stated that he "did not intend that any set of bandits should hold up Uncle Sam." Several years later in a public address he said: "If I had followed traditional methods, I should have submitted a dignified state paper of probably two hundred pages to Congress and the debate would be going on yet, but I took the Canal Zone and let Congress debate, and while the debate goes on the Canal does also."

In the Hay-Bunau-Varilla treaty with Panama in 1904,<sup>16</sup> the United States guaranteed the independence of the Panama Republic, and received in perpetuity a ten-mile canal zone, with all rights "as of full sovereignty"<sup>17</sup> over that area. The methods of President Roosevelt caused alarm in Latin America and created strained relations with Colombia. Demands for arbitration were rejected, however, by Secretaries of State Hay and Root, on the ground that the questions involved were of a political nature. Under the Taft administration efforts were made to restore friendly relations with Colombia, and under President Wilson a treaty was negotiated with Colombia in which the United States expressed "sincere regret that anything should have occurred to interrupt or to mar the relations of cordial friendship that has so long subsisted between the two nations," and agreed to pay Colombia twenty-five million dollars. This treaty was held up in the Senate until the Harding administration came into power, when it was finally ratified in 1922, with the omission of the clause expressing regret. The final treaty stated that its object was the desire of both countries

<sup>15</sup> *Literary Digest*, Oct. 29, 1904.

<sup>16</sup> W. B. Malloy, *Treaties*, II, 1349-1357.

<sup>17</sup> Note dispute over meaning of this phrase in 1927.

“to remove all the misunderstandings growing out of the political events in Panama in November, 1903.”<sup>18</sup>

In securing the consent of England to abrogate the Clayton-Bulwer treaty, the United States had agreed that equal tolls should be charged to all nations using the canal. The Hay-Pauncefote treaty stated: “The canal shall be free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against such nation, or its citizens or subjects, in respect to the conditions or charges of traffic or otherwise.” In 1912, however, a Republican Congress passed a bill exempting from tolls vessels engaged in the coastwise trade. Since such trade was open only to American vessels, England protested that the United States was discriminating in favor of its own shipping, in violation of the terms of the treaty. Senator Root made an eloquent appeal<sup>19</sup> to his party to repeal this legislation, proving that it was contrary to our pledged word. On his accession to the Presidency, Woodrow Wilson appeared in person before Congress and asked it as a matter of national honor to repeal the measure.<sup>20</sup> Debate in the Senate was bitter and did not follow partisan lines. Republicans like Root, Lodge, and Kenyon upheld the President. The opposition was led by Senators Reed and O’Gorman, who represented the German element in the middle West and the Irish element in the East. The Hearst newspapers also opposed the President and attempted to revive the ancient prejudices against England. In April, 1914, the Tolls bill was repealed by a decisive vote, and our diplomatic relations with England were placed on a more satisfactory basis.

With the acquisition of Porto Rico and the establishment of a protectorate over Cuba as a result of the war with Spain, and the building of the Panama Canal, the United States began its policy of expansion in the Caribbean area. In agreeing to the Hay-Pauncefote treaty, England recognized the paramount interests of the United States in that area; and the United States adopted the policy of naval supremacy in the Caribbean, and formulated new political policies, including the acquisition of naval stations, the control of all canal routes, the establishment of protectorates, the supervision of finances, and the policing of disorderly countries. In 1904 President Roosevelt proposed that we should assume the

<sup>18</sup> *Treaties and Conventions*, III, 2538.

<sup>19</sup> *Addresses on International Subjects* (1916), pp. 208, 241.

<sup>20</sup> J. B. Scott, *President Wilson’s Foreign Policy, Messages, Addresses and Papers* (1918), p. 31.

financial administration of the Dominican Republic in order to prevent the forcible collection of debts by European powers. In his message of that year he said: "Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the western hemisphere, the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power." In spite of opposition in the Senate, the policy was put in force by the President in the form of a "gentlemen's agreement" with the Dominican government. In spite of the criticism that this policy encountered, the Taft administration continued it, and tried to extend it to Honduras and Nicaragua.

In 1915 the United States landed marines in Haiti, and drew up a treaty under which we assumed financial supervision and administrative control over the affairs of that country. This agreement carried the new Caribbean policies to the farthest limits short of actual annexation. In 1916 we acquired by treaty with Nicaragua an exclusive right of way for a canal and the lease of a naval base in her territory. In 1917 we acquired by treaty the Danish West Indies. This rapid advance in the Caribbean aroused the fears of the smaller Latin American states and led to the charge that the United States had changed the Monroe Doctrine from a policy of brotherly protection to one of aggressive imperialism. To meet this feeling, President Wilson, at the beginning of his administration, declared that "the United States will never again seek one additional foot of territory by conquest." His acceptance of the mediation of the A.B.C. powers<sup>21</sup> in our difficulties with Mexico and the interest he took in the Pan-American movement also helped to allay suspicion. President Wilson laid down as the basis of his Pan-American policy the following principles: all American states should unite in guaranteeing to each other political independence and territorial integrity; all disputes should be settled by impartial investigation and amicable arbitration; no state should permit revolutionary movements against other states to be fitted out in its territory, nor supply revolutionists with munitions of war.<sup>22</sup> The withdrawal of American marines from Nicaragua and the Domini-

<sup>21</sup> Argentina, Brazil, Chile.

<sup>22</sup> See "The New Pan-Americanism," in *World Peace Foundation*, Pt. II, 108. (Apr., 1916).



can Republic in 1925, and the attempt of the United States to aid in settling the dispute between Peru and Chile over the provinces of Tacna and Arica were in line with this policy; but recent difficulties with Mexico and Nicaragua have been attended by a more vigorous attitude on the part of the United States.

The expansion of American interests in the Caribbean area has led to widespread discussion of the Monroe Doctrine in recent years. In both Hague Conferences (1899, 1907) the American delegates went on record as follows: "Nothing contained in this Convention shall be so construed as to require the United States to depart from its traditional policy of not entering upon, interfering with, or entangling itself in the political questions or internal administration of any foreign state, nor shall anything contained in the said conventions be so construed as to require the relinquishment by the United States of its traditional attitude toward purely American questions." At that time the United States, though beginning to coöperate in international conferences, still demanded the right to continue its policy of isolation and to maintain the Monroe Doctrine.

In one respect the Monroe Doctrine was narrowed. In President Roosevelt's message of 1901, he stated: "We do not guarantee any state against punishment if it misconducts itself, provided that punishment does not take the form of acquisition of territory by any non-American power." Efforts, led by Germany, to compel Venezuela to pay certain claims finally resulted in an attempt to blockade the ports of that country. The United States objected and finally persuaded Venezuela and the European nations to submit the points at issue to the Hague Court. In opposition to President Roosevelt's statement that force might be used to collect debts owed by a Latin American state, Signor Drago, Argentine Minister of Foreign Relations, protested vigorously.<sup>23</sup> He restated the "Calvo Doctrine" that no state has the right to resort to armed intervention for the purpose of collecting the private claims of its citizens against another state. He argued that investments were made in foreign countries at the risk of the investor, that all states were equal and sovereign, and that payment of debts must be left to the nation concerned "without diminution of its rights as a sovereign entity." This doctrine, generally known as the "Drago Doctrine," was widely discussed, especially at the Pan-American Conference of 1906.

<sup>23</sup> *Foreign Relations* (1903), p. 1.



It was agreed to refer the question at issue to the Second Hague Conference of 1907. At that meeting a resolution introduced by the United States delegation was adopted. It provided that "the contracting powers agree not to have recourse to armed force for the recovery of contract debts claimed from the government of one country by the government of another country as being due to its nationals. This undertaking is, however, not applicable when the debtor state refuses or neglects to reply to an offer of arbitration, or, after accepting the offer, prevents any 'compromis' from being agreed on, or, after the arbitration, fails to submit to the award." In accordance with this principle, the United States refuses to protect a Latin American state against foreign coercion in case it refuses arbitration or fails to abide by the arbitration decision, provided the coercion does not lead to the acquisition of territory by a foreign state in the American hemisphere.

In numerous addresses delivered during his memorable visit to South America in 1906, Secretary of State Elihu Root gave an interpretation of the Monroe Doctrine that was welcomed in Latin America. In Uruguay he stated that the Monroe Doctrine was "an assertion to all the world of the competency of Latin Americans to govern themselves."<sup>24</sup> In his speech at the Third International American Conference at Rio de Janeiro, he said: "We wish for no sovereignty except the sovereignty over ourselves . . . we neither claim nor desire any rights or privileges or powers that we do not freely concede to every American republic."<sup>25</sup> President Wilson favored closer relations with Latin America, and in one of his earliest statements said: "One of the chief objects of the new administration will be to cultivate the friendship and deserve the confidence of our sister republics of Central and South America, and to promote in every proper and honorable way the interests which are common to the peoples of the two continents."<sup>26</sup>

Partly because of the growing hostility of Latin America to the United States and to its assertions of preëminence on the American continents, the Monroe Doctrine was seriously criticized by numerous American writers, especially in 1913 and 1914. Many leading newspapers maintained that the Doctrine needed clearer definition and some modification. The Boston *Herald* stated that "the time has clearly come for revaluing the Monroe Doctrine." The New York

<sup>24</sup> E. Root, *Latin America and the United States* (1917), p. 58.

<sup>25</sup> *Ibid.*, p. 6.

<sup>26</sup> E. E. Robinson and V. West, *The Foreign Policy of Woodrow Wilson* (1917), p. 179.

*World* said: "As it is now interpreted here and elsewhere, the Monroe Doctrine becomes not only a menace to our peace and safety, but fails utterly in its benevolent purpose as regards the southern republics." Professor Hiram Bingham<sup>27</sup> attacked the doctrine as obsolete and urged radical modification.

In recent years various proposals for a modification of the Monroe Doctrine have been favored.<sup>28</sup> One suggests a differentiation between the neighboring Caribbean region, where the governments are unstable and where the United States has special interests, and the more distant republics, such as Argentina, Brazil, and Chile, which are relatively stable and in little danger of territorial aggression from Europe. President Coolidge recognized this distinction when he said: "Toward the government of countries which we have recognized this side of Panama we feel a moral responsibility that does not attach to other nations."<sup>29</sup> Another proposes to place the Monroe Doctrine on a Pan-American basis, inviting the stable Latin American republics to coöperate with the United States in interpreting and enforcing the Monroe Doctrine on this continent. Roosevelt, in an address at Rio de Janeiro in 1913, said: "All the nations which are sufficiently advanced, such as Brazil and the United States, should participate on an absolute equality in the responsibilities and development of this doctrine so far as the interests of the western hemisphere as a whole are concerned. It must be made a continental and not a unilateral doctrine." Richard Olney, in spite of his earlier declaration concerning the sovereignty of the United States on this continent, stated in 1914 that the United States should proceed, "not by making itself an international boss but . . . by initiating, cultivating, and working through an American concert."<sup>30</sup>

President Wilson, in his address to the Senate in January, 1917, proposed a still more extensive coöperation. He said: "I am proposing, as it were, that the nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world: that no nation should seek to extend its polity over any nation or people." Widespread American sentiment, however, demanded

<sup>27</sup> *The Monroe Doctrine an Obsolete Shibboleth* (1913). He recanted these views after the Great War. For recent discussions of the Monroe Doctrine, see A. B. Hart, *The Monroe Doctrine, an Interpretation* (1916); D. Y. Thomas, *One Hundred Years of the Monroe Doctrine* (1923).

<sup>28</sup> C. H. Sherrill, *Modernizing the Monroe Doctrine* (1916).

<sup>29</sup> Speech before the United Press Association in New York City, Apr. 25, 1927.

<sup>30</sup> *American Journal of International Law*, I, No. 2, 425.

specific reservation of the Monroe Doctrine; and President Wilson inserted in the Covenant of the League of Nations the provision: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace." The American Senate was not willing to consider the Monroe Doctrine even as a "regional understanding," and voted that the Monroe Doctrine was to be interpreted by the United States alone, and was wholly outside the jurisdiction of the League.<sup>31</sup>

The most recent official statement of the doctrine was that of Secretary of State Hughes<sup>32</sup> in 1923, when he stated that "it is opposed to any non-American action encroaching upon the political independence of American states under any guise, and to the acquisition in any manner of the control of additional territory in this hemisphere by any non-American power." He added that it was a policy of self-defense, not of aggression, but that "the United States reserves to itself its definition, interpretation, and application." He said: "The United States has rights and obligations which that doctrine does not define. And in the unsettled condition of certain countries in the region of the Caribbean it has been necessary to assert those rights and obligations as well as the limited principles of the Monroe Doctrine." Secretary Hughes asserted that the Monroe Doctrine does not stand in the way of Pan-American coöperation, but furnishes "the necessary foundation for that coöperation in the independence and security of American states." Moreover, it is not an obstacle to world-wide coöperation "whenever that coöperation is congenial to American institutions." "Our attitude is one of independence, not of isolation." This expansion of the Monroe Doctrine is sometimes referred to as the Hughes Doctrine.

The issue of "dollar diplomacy" was widely discussed during this period. Opinion differed as to the proper policy of the American government in protecting American investments and property in unstable countries. President Roosevelt warned Latin-American countries that disorder and failure to meet financial obligations would compel the United States to exercise an "international police power."<sup>33</sup> President Taft, when criticized for giving political aid

<sup>31</sup> A. B. Hall, *The Monroe Doctrine and the Great War* (1920).

<sup>32</sup> In a speech delivered at the annual meeting of the American Bar Association in Minneapolis, Aug., 1923.

<sup>33</sup> This was known as his "big stick" policy.

to American interests seeking land and privileges in Latin America, replied that such criticism would not prevent this country from discharging its duty as occasions arose. This policy was reversed by President Wilson. He declared that American capitalists were trying to dominate the domestic affairs of the smaller Latin American nations, and that those states should be emancipated and treated as equals. Capital seeking investment abroad must take its own risks and not expect political support. His policy of "watchful waiting" in Mexico, and his refusal to recognize governments based upon illegal force represented the same idealistic attitude in world politics. President Coolidge returned to the earlier policy, and stated that it was the duty of the American government to protect the interests and property of its citizens abroad. He opposed vigorously the attempts of Mexico to prevent foreign control of her mineral and oil resources.

Recent American policy in Latin America has been opportunist in nature. Attempts have been made to establish a Central American Court of Justice and to create a Union of Central America. Since the days of Blaine, efforts have been made in the direction of Pan-Americanism.<sup>34</sup> Various Pan-American conferences have met to discuss common issues and to promote the spirit of coöperation; and the Pan-American Union in Washington has done excellent work in serving as a clearing-house for information.<sup>35</sup> Nevertheless, there is widespread fear and dislike of the United States in Latin America. Active propaganda is carried on by an influential group opposed to the policies of this country,<sup>36</sup> and bitter criticism of the American attitude appears in the speeches and writings of Latin American leaders. "America for Americans" is interpreted in Latin America as "America for the United States." Calderon, in his widely read book,<sup>37</sup> says: "The Monroe Doctrine has undergone an essential transformation; it has passed successively from the defensive to intervention and thence to the offensive. . . . The United States seek to conquer new territories for their imperialist race." Racial antagonisms, linguistic and cultural differences, and

<sup>34</sup> R. G. Usher, *Pan Americanism* (1915). For a good discussion of the American doctrine of Pan-Americanism from the foreign viewpoint, see article by Dr. W. Drascher, in *Preussische Jahrbücher*, Dec., 1926.

<sup>35</sup> See the publications of the Pan-American Union.

<sup>36</sup> E. Perry, "Anti-American Propaganda in Hispanic America," in *Hispanic American Historical Review*, III, 17 (Feb., 1920); J. F. Rippey, *Literary Yankeeophobia in Hispanic America* (1922); M. Ugarte, *El Parvenir de la América Latina* (1910), *El Destino de un Continente* (1923); C. H. Haring, *South America Looks at the United States* (1928).

<sup>37</sup> *Latin America* (1911).

the methods of modern business are serious obstacles to mutual understanding. Statements such as that of Mr. Taft when a member of Roosevelt's Cabinet in 1906, that "the frontiers of the United States virtually extend to Tierra del Fuego," aroused widespread criticism in the Latin-American press. Dr. L. M. Moreno, an eminent Argentine lawyer, expressed recently the opinions of many Latin Americans when he wrote: "The Monroe Doctrine is not a doctrine of America for the Americans, but of America for the North Americans. It has served as an admirable instrument for the United States to separate Europe from America and to establish its hegemony over the latter. The United States has been at all times preoccupied in obtaining concessions of every kind at the cost of the sovereignty of the rest of the American states. The doctrine is dangerous because it is North American imperialism hidden under a principle of international law."<sup>38</sup>

## 2. RELATIONS WITH THE ORIENT

The opening up of China and the rise of Japan to the position of a world power revolutionized international politics and increased the interest of the United States in international affairs. Previously the center of world influence was Europe, and the European balance of power dominated the globe. The United States occupied an advantageous detached position, able to maintain its Monroe Doctrine without great military or naval strength, since no European power dared to question it for fear of disturbing the European balance. The rise of Japan, however, created another detached power, with no tradition of isolation, but with an eager desire to assert herself in world affairs, to contest with the United States for the mastery of the Pacific and with the European powers for influence in China.

The policy of the United States toward China has been based upon two fundamental principles. The first was the determination to prevent Chinese immigration to the United States; the second was to maintain the "Open Door" policy,<sup>39</sup> preventing China from being partitioned among the other great powers and permitting the development of commercial relations with the United States. From the opening up of China, the United States insisted on the preser-

<sup>38</sup> *New York Times*, Oct. 13, 1920. See also W. S. Robertson, "South America and the Monroe Doctrine," in *Political Science Quarterly*, XXX, 82 (Mar., 1915).

<sup>39</sup> M. J. Bau, *The Open Door Doctrine in Relation to China* (1923); E. T. Yen, *The Open Door Policy* (1923).



vation of the territorial integrity of that country, but at the same time demanded "most-favored-nation" treatment for the United States, so that no nation should compel China to discriminate in its favor in commercial matters. The United States also demanded "extraterritorial" rights for its citizens, being unwilling to have them tried under Chinese law or by Chinese methods of justice. While the Burlingame treaty of 1868 recognized the right of Chinese to emigrate to the United States and to transfer their allegiance, the states on the Pacific coast, after 1876, demanded Chinese exclusion. A law of Congress prohibiting the admission of Chinese laborers was vetoed by President Hayes as a violation of our treaty agreement, but continued demand for exclusion led to the negotiation of a new treaty in which China released us from our promise. In 1882 another exclusion Act<sup>40</sup> was passed, and since that time Chinese laborers have not been admitted. In addition Chinese were made ineligible to citizenship by naturalization.

With the tendency toward economic imperialism that resulted from the desire of the western nations to sell their goods in China and to invest their surplus capital in building railways and developing resources in that country, the policy of creating "spheres of influence" was begun. Arrangements were made among the European powers by which sections of China were allotted to the various powers for economic exploitation, with strong possibility that the ultimate result would be the dismemberment of China. The United States desired to share in the economic opportunities, but she had no desire for territory in China, nor did she wish the European powers to destroy its territorial integrity. By 1899 the situation had developed to the point where the United States was compelled to take a definite stand. It could not compel the European nations to keep out of China, and its rapidly growing economic interests in the Orient prevented a policy of indifferent isolation. The only solution was to coöperate with the European powers, and at the same time attempt to restrain their selfish ambitions. Accordingly, Secretary of State John Hay<sup>41</sup> reasserted the Open Door policy.<sup>42</sup> He proposed that the powers having spheres of influence

<sup>40</sup> *U.S. Statutes at Large*, XXII, 58-61.

<sup>41</sup> W. R. Thayer, *Life and Letters of John Hay* (1915).

<sup>42</sup> This action was stimulated by a series of addresses in America made by Lord Charles Beresford, in which he urged the United States to unite with England and Japan in an effort to maintain the open door. President McKinley, however, preferred to follow the example of Monroe and announce our policy independently. Dept. of State, *Correspondence Concerning American Commercial Rights in China* (1900), pp. 15-17.



should allow all nations to trade equally and freely in the treaty ports lying within such spheres; that duties collected in such areas should be fixed by the regular Chinese tariff and not by the European nation controlling the sphere; and that European nations should not levy higher harbor dues on vessels of other nationalities or charge higher railway fares within their spheres of influence.<sup>43</sup>

The European nations and Japan professed accord with these principles,<sup>44</sup> but the exploitation of China continued. The outbreak of the Boxer Revolt, by which China attempted to exclude foreigners from China, led to armed intervention, in which the United States took part, and to the imposing of heavy indemnities on China. To meet this obligation, China was compelled to borrow money from the European powers. Compared with the exaggerated demands of the European powers, the American indemnity was small, and a considerable portion of the amount originally demanded was returned to China. This amount was set aside to send Chinese students to the United States. The imperialistic policy of the other powers led Hay to restate the American policy toward China. He said: "The policy of the government of the United States is to seek a solution which may bring about permanent safety and peace in China, preserve Chinese territorial and administrative entity, protect all the rights of friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of China."<sup>45</sup> In spite of our opposition, however, the European powers and Japan continued their encroachments.

In 1910 a revolution in China deposed the emperor and established a republic. This movement was viewed with satisfaction in the United States, and it was believed that the awakening of China was due in large part to American influence. The new government was hampered by the obligations of the government it replaced, and possessed no financial independence. Plans for the building of railways led to additional borrowing from foreign nations. While the United States had previously refused to participate in these loans, or to assume responsibility for American investments in China, President Taft decided to depart from the policy of strict non-intervention which left China at the mercy of the other powers. In his message to Congress in 1912,<sup>46</sup> he said: "In China the policy

<sup>43</sup> W. Malloy, *Treaties and Conventions*, I, 244-260.

<sup>44</sup> *Foreign Relations* (1899), pp. 128-142.

<sup>45</sup> *Ibid.* (1901).

<sup>46</sup> *Congressional Record*, Dec. 3, 1912.

of encouraging financial investment to enable that country to help itself has had the result of giving new life and practical application to the open-door policy. The consistent purpose of the present administration has been to encourage the use of American capital in the development of China by the promotion of those essential reforms to which China is pledged by treaties with the United States and other powers. The hypothecation to foreign bankers in connection with certain industrial enterprises, such as the Hukuang railways, of the national revenues on which these reforms depended, led the Department of State, early in the administration, to demand for American citizens participation in such enterprises, in order that the United States might have equal rights and an equal voice in all questions pertaining to the disposition of the public revenues concerned."

Before President Taft's plan to have American bankers share in the new loans to China could be carried out, the Democratic party came into power under Woodrow Wilson. He believed that the loan would further destroy the independence of China, and returned to the earlier policy of non-intervention. Arguing that the plan to force a loan on China was "obnoxious to the principles upon which the government of our people rests," Wilson said: "The conditions of the loan seem to us to touch very nearly the administrative independence of China itself; and this administration does not feel that it ought, even by implication, to be a party to those conditions. The conditions include not only the pledging of particular taxes, some of them antiquated and burdensome, to secure a loan, but also the administration of those taxes by foreign agents." With the support of the government removed, the American bankers withdrew from the loan.

The outbreak of the World War gave Japan an opportunity to extend her control over China. The German leaseholds in Kiaochow and Shantung were captured by Japan, in spite of the fact that China was at that time a neutral; and the "Twenty-one Demands,"<sup>47</sup> which Japan attempted to force on China, would have made China virtually a vassal state. Secretary of State Bryan's policy of peaceful persuasion made it difficult for the United States to maintain the Open Door policy, although China was notified by our government that we would not recognize any agreement which impaired the treaty rights of the United States or violated the Open Door policy. After the United States entered the European

<sup>47</sup> G. Z. Wood, *The Twenty-one Demands* (1921).

war in 1917, our efforts were directed toward persuading China to break off diplomatic relations with Germany.<sup>48</sup> In spite of the opposition of Japan, China finally decided to enter the war, as in this way only could the Japanese demands be aired at the Peace Conference. In order to finance Chinese participation, loans were necessary, and the European powers were financially unable to give assistance. Japan was willing to make loans, but this would place China under further obligations. To prevent this, and to find an outlet for the surplus capital which the United States accumulated during the war, President Wilson abandoned his opposition to American participation, and urged our bankers to come to China's aid. By this policy the government of the United States committed itself to the protection of American investments in China, and the present attempt of China to throw off foreign interference involves the United States as well as the other world powers.<sup>49</sup>

From the opening up of Japan to the first years of the twentieth century, the relations between the United States and Japan were friendly.<sup>50</sup> American missionaries performed valuable educational service in the islands. President Grant's visit to Japan at the close of his term of office did much to cement friendly relations; the favorable attitude of the United States toward Japan's demands for tariff autonomy and for the removal of extraterritorial privileges was much appreciated; and American sympathy was clearly on the side of Japan in her war with Russia in 1904-1905. After this date public opinion in both countries underwent a change. President Roosevelt was severely criticized by the Japanese press for his efforts in persuading the Japanese to give up their claims to an indemnity at the close of the war with Russia. In America certain newspapers began to talk of the "yellow peril" and to prophesy a war between the United States and the rising Asiatic power. Newspaper opinion also opposed Japan's demand for a "place in the sun," and her attempts to get a foothold in China.<sup>51</sup> The United States frequently reasserted and defined the open door. During the Great War, however, Japan gained a commanding position in the Orient, and desired a recognition of that position. When America entered the war, Viscount Ishii visited Washington to arrange for

<sup>48</sup> P. S. Reinsch, *An American Diplomat in China* (1922).

<sup>49</sup> W. W. Willoughby, *Foreign Rights and Interests in China* (1920).

<sup>50</sup> P. J. Treat, *Japan and the United States, 1853-1921* (1921).

<sup>51</sup> R. L. Buell, "The Development of the Anti-Japanese Agitation in the United States," in *Political Science Quarterly*, XXXVII, 605-637 (Dec., 1922); XXXVIII, 57-81 (Mar., 1923).

coöperation between the United States and Japan in defeating Germany. In the course of negotiations the following agreement was made: "The governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and consequently the government of the United States recognizes that Japan has special interests in China, particularly in parts to which her possessions are contiguous." Difference of opinion in the two countries arose over what was meant by "special interests." The Japanese insisted that it meant "predominant interests"; the United States held that it did not intend to abandon its traditional Open Door policy.<sup>52</sup>

In 1912 a rumor that Japan was attempting to secure a naval base at Magdalena Bay on the coast of Lower California led the Senate to adopt a resolution which forbade any foreign government, European or otherwise, to acquire land for a naval base in the Americas. This extended the Monroe Doctrine to the Oriental powers, forbidding them to interfere with our special interests in Latin America, and created considerable bad feeling in Japan. More serious difficulties arose over the question of immigration. The surplus laborers of Japan began to enter California, take up land, and, with lower standards of living, secure control of certain agricultural industries. California demanded the exclusion of the Japanese, and segregated the Japanese children in separate schools in the city of San Francisco. This discrimination was resented by the Japanese government, which called attention to the treaty of 1894, providing that "the citizens of each of the two High Contracting Parties shall have the full liberty to enter, travel, or reside in any part of the territories of the other contracting Party, and shall enjoy full and perfect protection of their persons and property."<sup>53</sup> The California legislature also attempted to prevent the Japanese from acquiring additional farm lands by legislation forbidding the purchasing or leasing of land by aliens not eligible to citizenship. Numerous writers began to discuss the questions of race amalgamation, and the Oriental problem assumed on the Pacific Coast the same importance that the negro problem presented in the South.<sup>54</sup>

Secretary of State Root, in 1906, made a "Gentlemen's Agreement" with Japan, by which that government agreed not to grant

<sup>52</sup> *Senate Doc. 106*, 66th Congress, 1st sess., 226 ff.

<sup>53</sup> W. Malloy, *Treaties and Conventions*, I, 1029.

<sup>54</sup> W. S. McClatchy, "The Japanese in the Melting Pot," in *Annals of American Academy of Political and Social Science*, XCIII, 29 (Jan., 1921).

passports to Japanese laborers who wished to emigrate to the United States. At that time Secretary Root cabled: "The United States will not for a moment entertain the idea of any treatment of the Japanese problem other than that accorded to the people of the most friendly European nations." Continued agitation for the exclusion of Japanese, and various discriminatory laws that were enacted or proposed by the Pacific Coast states kept the issue alive and created unfriendly feeling in both nations.<sup>55</sup> The Immigration Act of 1924 finally excluded Japanese immigrants by Congressional action. Politicians of both parties were influenced by the desire to win votes in the Pacific Coast states and by the demand for exclusion made by the American Federation of Labor, the American Legion, and the National Grange. They had no intention to humiliate Japan, but preferred the policy of national self-assertion to the broader policy of international coöperation. Congress also chose to assert its prerogative to control immigration, rather than to leave that question to executive agreements or to treaties. Senator Swanson said: "I am tired of the executive determining American foreign policy." Considerable resentment was felt in Congress toward a note sent to the Department of State by the Japanese ambassador in Washington in which he warned the United States that the exclusion bill would bring "grave consequences" in Japanese-American relations.<sup>56</sup>

There was considerable opposition in the United States to this action. A large part of the press disapproved of the method used to exclude the Japanese and considered it an unnecessary affront to Japan. Many leaders in the educational and religious world joined in a cablegram to Japan, stating that "the inconsiderate action of the American Congress . . . does not represent the sentiments of the American people toward Japan." The United States Chamber of Commerce, by an almost unanimous vote, declared against "this affront to Japan." The *New York Times* said: "Its passage despite the protest of the Department of State, without apparently paying due attention to the diplomatic questions involved, is but another example of that legislative intemperance which has been so manifest in Washington in recent months." In Japan all classes regarded the action of the United States as a national insult, and a nation-

<sup>55</sup> See *California and the Oriental* (pub. by Calif. State Board of Control, rev. ed., 1922), and comment thereon by K. K. Kawakami, *Real Japanese Question* (1921).

<sup>56</sup> R. L. Buell, *Japanese Immigration* (1924); W. H. Taft, "Japan and America," in *Independent*, XC, 45-48, 85-86 (Jan. 20, 1923).



wide demonstration was made on the day when exclusion became effective. Nineteen important newspapers published a joint declaration against the "outrageous enactment which not only offends against justice and humanity, but which disregards the traditional friendship which has subsisted between Japan and America." When the Japanese Diet opened, both houses passed resolutions strongly opposing the exclusion provision. This action on the part of the United States unquestionably strengthened the spirit of hostility to the western world in both Japan and China, and gave a stimulus to Pan-Asiatic sentiment.

Popular irritation in Japan was increased by the plans of the United States to base the naval maneuvers in 1925 upon the Hawaiian Islands; and considerable resentment was expressed in the United States to the Japanese amendment to the Geneva Protocol for the Pacific Settlement of International Disputes, proposing that the Council or Assembly of the League of Nations might suggest a settlement in case a domestic issue should endanger international peace. This amendment was interpreted as an effort by Japan to bring the immigration question before the League for discussion and possible decision. In both countries agitation was started for a larger navy, and the chairman of the Naval Affairs Committee of the House of Representatives introduced a resolution favoring a conference of the white nations of the Pacific in order to promote their solidarity, and to discuss common military defense.

More recently both nations have labored earnestly to suppress manifestations of antagonism, and to emphasize the importance of continuing friendship. When a new Japanese ambassador to the United States was appointed, Secretary of Hughes stated: "We can look forward now to the most cordial relations with Japan." The Japanese Minister of Foreign Affairs said: "Our continued development and security to a large measure depend upon the maintenance of good relations with America." Typical of this attitude was the passage by the Imperial Diet of Japan of a law abolishing "dual nationality," and providing that Japanese born abroad should hereafter lose their Japanese nationality, unless they took formal action to preserve it. This action removed the friction created by the former practice of viewing every child born of Japanese parents in the United States as a Japanese citizen, liable to service in the Japanese army.<sup>57</sup> The achievements of the Wash-

<sup>57</sup> R. Malcolm, "American Citizenship and the Japanese," in *Annals of American Academy of Political and Social Science*, XCIII, 77 (Jan., 1921).



ington Conference (1921), especially in abrogating the Anglo-Japanese Alliance, which was viewed with deep concern in the United States, and in creating the Four-Power Pact among the United States, Great Britain, France, and Japan, relating to the islands of the Pacific, did much to improve relations between Japan and the United States.

In general the United States takes a regional attitude in foreign policy. It wishes to leave entirely to Europe the settlement of European political issues and to avoid participation in its political disputes. On this continent it aims to keep Europe and the Asiatic nations out of American politics and to group the American republics into a Pan-American Union<sup>58</sup> under the friendly leadership of the United States. It feels a particular responsibility for the maintenance of peace and security in the Latin-American states and is extending its control, directly and indirectly, over the Caribbean area. It is willing to coöperate in the Far East with the Oriental nations and with the European powers whose possessions and interests lie in the Pacific area, and is taking a leading part in settling political affairs in Eastern Asia, partly because of its possession of the Philippine Islands, and partly because of its economic, religious, and educational interests in China. Commercial competition with Japan in the Pacific area, the exclusion of Japanese immigrants and discriminatory legislation against Japanese in America, and the clash between Japan's policy of special interests in China and the American policy of the open door, make our relations with Japan particularly difficult and important.<sup>59</sup>

### 3. INTERVENTION IN EUROPE

The policy of isolation from the world politics of Europe which "our detached and distant situation" in Washington's day made desirable, became a tradition increasingly difficult to maintain as the United States grew in area, population, and wealth, and as our social, financial, and commercial relations with Europe became more intimate. The Spanish War and the acquisition of the Philippines brought us into the current of world politics, but not until the World War did public opinion in the United States awaken to a sense of our international interests.

<sup>58</sup> S. G. Inman, *Problems in Pan-Americanism* (1921).

<sup>59</sup> K. Kawabe, *Press and Politics in Japan* (1921); H. Chung, *The Oriental Policy of the United States* (1919); I. Tokutomi, *Japanese-American Relations* (1922); S. Greenbie, *The Pacific Triangle* (1921).

President Wilson and Secretary of State Bryan both hated war with Jeffersonian fervor, and Bryan was successful in negotiating a number of arbitration treaties which provided for a year's investigation before war might be declared. Realizing the danger of a general European war, President Wilson, with the aid of Colonel House and Ambassador Page, attempted to get England, France, and Germany together, but Germany insisted upon its elaborate military and naval program, and England and France were torn by dissensions arising from domestic politics.<sup>60</sup> The peace efforts of this period were to no purpose. At the outbreak of the war President Wilson followed the traditional American policy in issuing a proclamation of neutrality.<sup>61</sup>

Even ex-President Roosevelt, who soon reversed his attitude, stated at first that "nothing but urgent need would warrant breaking our neutrality and taking sides one way or the other." Public opinion was confused. Many Americans of German descent sympathized with their homeland; Irish-Americans were hostile to England. On the other hand citizens of English and Canadian ancestry were zealous in securing our support for the allies. Propaganda of all sorts was used by both sides. President Wilson at first regarded the war as a conflict over commercial issues, and had little sympathy with any of the belligerents. He wished neither side to win, and hoped for a "peace without victory."

A neutral attitude was difficult to maintain in view of the extent of the war and of the American interests involved. In spite of the large German population in the United States and of vigorous German propaganda, the invasion of Belgium and the general feeling that Germany was the aggressor and was guilty of war atrocities arrayed a large share of American opinion on the side of the allies. On the other hand, the naval policy of England in enlarging the contraband lists, blockading neutral countries bordering on Germany, and "blacklisting" American firms known to be sympathetic with Germany, led to vigorous diplomatic protests from the United States.<sup>62</sup> The necessities of the war compelled England to adopt the policy stated by the Prime Minister in the House of Commons as follows: "In dealing with opponents who have

<sup>60</sup> B. J. Hendrick, *Life and Letters of Walter H. Page* (1922), I, 270-300.

<sup>61</sup> *U.S. Statutes*, XXVIII, 1999 (1914).

<sup>62</sup> See "Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Commerce," in supplement to *American Journal of International Law*, IX (1923); J. W. Garner, *International Law and the World War* (1920), I, 29 ff.

openly repudiated all restraint of both law and humanity, we are not going to allow ourselves to be strangled by a network of judicial niceties . . . there is no form of economic pressure to which we do not consider ourselves entitled to resort.”<sup>63</sup>

In spite of vigorous German and Austrian protests, the United States insisted on her right to sell munitions and supplies to both belligerents, although British control of the seas prevented such supplies from reaching the Central Powers. To the German contention that conditions in the war resulted in America supplying the needs of the enemies of Germany, Secretary of State Bryan replied that “any change in its own laws of neutrality during the progress of the war which would affect unequally the relations of the United States with the nations at war would be an unjustifiable departure from the principle of strict neutrality.”<sup>64</sup> In spite of German efforts to influence public opinion, Congress refused to place an embargo on the export of munitions. The American Government adopted the principle of Chancellor Kent that “a trade by a neutral in articles contraband of war is a lawful trade, though a trade of necessity subject to inconvenience and loss.”<sup>65</sup>

Meantime, the policy of Germany in scattering mines in the path of British commerce, and in levying submarine warfare on merchant vessels led to American protests and to the statement that Germany would be held to “strict accountability” for the loss of American ships or lives. In spite of Germany’s illegal submarine warfare, President Wilson exhausted the resources of diplomacy before breaking off relations with Germany.<sup>66</sup> He realized that a large part of the public opinion of the country was opposed to war and he still hoped that the United States might act as mediator between the warring nations.

Throughout 1916 President Wilson made various efforts to induce the belligerents to open peace negotiations. When these failed he asked for a clear statement of the war aims of all the nations concerned. In January, 1917, in a notable address before the Senate, he pointed out that America could no longer remain isolated in world politics, favored a Monroe Doctrine for the whole world, under which “no nation should seek to extend its polity over any other nation or people . . . and that all nations hence-

<sup>63</sup> *Hansard*, 5th Ser. LXX, 600.

<sup>64</sup> *Diplomatic Correspondence with Belligerent Governments*, No. 1, 73.

<sup>65</sup> *Seton v. Low*, 1 *Johnson* (N.Y.; 1799).

<sup>66</sup> J. B. Scott, *Survey of the International Relations Between the United States and Germany, 1914-1917* (1917).

forth avoid entangling alliances which drew them into competitions of powers," and proposed the formation, at the close of the war, of a League of Nations to prevent future wars. The adoption of the policy of unrestricted submarine warfare by Germany and the disclosure of a German note asking Mexico to join with Germany and Japan in a war against the United States, aroused American public opinion. Meantime the popular sentiment in favor of war had gained ground. Investors in Anglo-French bonds, and manufacturers who had sold supplies to the allies, wished to safeguard their investments; and many thoughtful Americans feared the consequences of a German victory. Advocates of preparedness were well organized and vociferous;<sup>67</sup> the peace movement fell increasingly into the hands of impractical idealists.

On April 2, 1917, the President, before a joint session of the two houses of Congress, urged "that the Congress declare the recent course of the German government to be in fact nothing less than war against the government and people of the United States; that it formally accept the status of belligerent which has thus been thrust upon it; and that it take immediate steps not only to put the country in a more thorough state of defense, but also to exert all its power and employ all its resources to bring the government of the German Empire to terms and end the war."<sup>68</sup> On April 6, Congress declared war, and in a short time the war creed of the allies was vigorously impressed upon the United States. To question any part of it branded one as a "Hun" or a traitor. A small group in Congress, led by Senator LaFollette, opposed the declaration of war. They argued that the United States had not been actually neutral but that we had permitted England to violate international law while expecting Germany to observe it. They asserted that the war was not intended to make the world "safe for democracy," since many of the allied nations were autocratic and imperialistic. Finally they held that the people of the United States did not want war, urged a popular referendum on the question, and attacked the espionage and conscription bills as proof of the absence of popular support.

The advent of America into the World War gave President Wilson the opportunity to formulate a definite and comprehensive

<sup>67</sup> T. Roosevelt, *The Foes of Our Own Household* (1917); L. Wood, *Our Military History, Its Facts and Fallacies* (1916); H. D. Wheeler, *Are We Ready?* (1915); F. L. Huidekoper, *The Military Unpreparedness of the United States* (1915).

<sup>68</sup> *Messages and Papers of Woodrow Wilson*, I, 372.

body of political doctrine relative to the position of the United States in world politics. Even before the war, in his Latin American policy, he had declared that the United States would "never again seek one additional foot of territory by conquest." He proposed that the nations of America should unite "in guaranteeing to each other absolute political independence and territorial integrity." He refused to recognize the despotic power of Huerta of Mexico, and was determined to allow the people of that country to work out their own system of government. While his earlier statement that America was not concerned with the causes and objects of the war, his insistence on neutrality in "thought, word, and deed," and his expression "too proud to fight" were seriously criticized, he believed firmly that America should, if possible, "stand aloof from the politics of Europe," that we had "no part either of action or of policy in the influences which brought on the present war," and that we could play our best part in the period of peace and reconstruction after the war. He was gradually forced to the conclusion that we in America must be "ready to fight for our rights when those rights are coincident with the rights of man and humanity."

In a series of addresses and state papers, Wilson laid down principles that made him the recognized spokesman of the liberal element in all countries.<sup>69</sup> He insisted that "peace must be followed by some definite concert of power which will make it virtually impossible that any such catastrophe should ever overwhelm us again," and asked the American people to give "formal and solemn adherence to a League of Peace." He believed that the peace at the close of the war should be a "peace without victory," based on principles of justice. He emphasized the principle that governments derive their just powers from the consent of the governed, and urged the principle of the "self-determination of nations." He insisted upon the "freedom of the seas," holding that every people "should be assured a direct outlet to the sea" and should have "free access to the open paths of the world's commerce." He believed that the limitation of naval armaments was the "most immediately and intensely practical question connected with the future fortunes of nations and of mankind." He distinguished

<sup>69</sup> On the foreign policy of President Wilson, see R. S. Baker, *Woodrow Wilson and the World Settlement* (1922); E. M. House and C. Seymour, *What Really Happened at Paris* (1921); J. M. Beck, *The Passing of the New Freedom* (1920); R. Lansing, *The Peace Negotiations* (1921); J. B. Scott, *President Wilson's Foreign Policy* (1918); C. H. Haskins and R. H. Lord, *Some Problems of the Peace Conference* (1920).



between the German people and the German government, stating that we had "no quarrel with the German people." He wished to "make the world safe for democracy." He believed in "the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience."

In his famous Fourteen Points,<sup>70</sup> Wilson stated the war aims of the United States and the conditions of a just peace. These included open diplomacy, the freedom of the seas, the removal of economic barriers, the reduction of armaments, an equitable adjustment of colonial claims, giving consideration to the interests of the populations concerned, the revision of the boundaries of European states on the principle of the self-determination of nations, and the formation of a general association of nations. He stated that the United States was ready "to assume its full share of responsibility for the maintenance of the common covenants and understandings upon which peace must henceforth rest."<sup>71</sup> The Wilson principles were accepted by the allies as the basis of peace negotiations, with the proviso that they reserved freedom to interpret what was meant by the "freedom of the seas," and that Germany must make compensation for the damage she had done. There was considerable criticism in the United States of the President's willingness to negotiate with Germany. Many demanded a complete military triumph; and Senator Lodge, who was the leader of the Republican opposition to President Wilson, stated in the Senate: "The Republican party stands for unconditional surrender and complete victory. . . . They mean to have a dictated, not a negotiated, peace."

Wilson decided to go in person to Paris to head the American delegation at the peace conference. This was without precedent in American history and aroused considerable opposition. Realizing the growing Republican opposition, he appealed, before leaving, to the American people to vote for the Democratic candidates for Congress, if they wished him to continue to be their "unembarrassed spokesman in affairs at home and abroad." This statement did much to turn the tide of public opinion against the President; and the elections, which returned a majority of Republicans in both houses, were viewed by many as a repudiation of the President and his policies. As the negotiations at Paris progressed, President Wilson was not able to secure a peace treaty

<sup>70</sup> *Messages and Papers of Woodrow Wilson*, I, 464.

<sup>71</sup> *Ibid.*, I, 520.



based upon the principles he had favored, and was compelled to make many concessions in order to secure the League of Nations on which his mind was set. Meantime opposition to the President and to the League of Nations was growing in the Senate.<sup>72</sup> Many Senators believed that the Covenant was contrary to the traditional policy of the United States and that it was inconsistent with our Constitution and governmental system. Other conspicuous leaders,<sup>73</sup> who favored a League of Nations, urged amendments to the Covenant, such as the reservation of the Monroe Doctrine and of the right of the United States to withdraw from the League.

The leaders of the opposition argued that consideration of a League of Nations should be postponed until after peace was concluded with Germany. The President insisted that the terms of peace and the Covenant of the League were so closely interwoven that they could not be separated.<sup>74</sup> In spite of the opposition of the Senate, President Wilson was convinced that the people of the United States favored the League of Nations, and that public opinion could force the Senate to ratify the treaty.<sup>75</sup> When the final document, in which some of the changes suggested by friendly critics had been incorporated, was presented to the Senate, elaborate open hearings and debates were held. Opposition came from many sources. Some opposed the severe terms imposed upon Germany. Some opposed the abandonment of our isolation policy, and believed that membership in the League of Nations would destroy our national sovereignty. Many opposed Article X, which guaranteed the territorial integrity and political independence of the members of the League, believing that it would entangle the United States in the internal controversies of Europe and deprive Congress of its right to declare war. Many felt that the President had usurped authority, and that Congress must maintain its prerogatives and check executive control of foreign policy.<sup>76</sup> Some Senators opposed ratification in any form; some favored ratification with various reservations that would safeguard the rights and interests of the

<sup>72</sup> R. G. Adams, *History of the Foreign Policy of the United States* (1924), Ch. XVII; D. J. Hill, "The President's Challenge to the Senate," in *North American Review*, CCIII, 737-754 (1920); W. A. Phillips, "The Senate and the Covenant," in *Edinburgh Review*, CCXXXII, 1-29 (1920).

<sup>73</sup> Such as ex-President Taft, Elihu Root, and President Lowell of Harvard.

<sup>74</sup> For the speeches delivered by President Wilson abroad, see *International Ideals* (1919); *The Triumph of Ideals* (1919). For the messages and addresses delivered in the United States on behalf of the League of Nations, see *The Hope of the World* (1920).

<sup>75</sup> *Messages and Papers of Woodrow Wilson*, II, 647.

<sup>76</sup> E. S. Corwin, *The President's Control of Foreign Policy* (1917).

United States. Republican leaders were eager to utilize the tide of public opinion which was turning against the President for the purpose of electing a Republican President at the next election. In spite of an extended tour made by the President for the purpose of arousing public opinion in favor of the treaty, and of various attempts to secure ratification with reservations, the Senate finally rejected the treaty <sup>77</sup> and the League of Nations began its existence with the United States standing aloof.

The idea of a League of Nations did not originate with Woodrow Wilson. For centuries, idealists had suggested some form of world organization to prevent war.<sup>78</sup> The experience of Americans in forming the federal Union made familiar the concept of a league of states. Charles Sumner<sup>79</sup> and William Ladd<sup>80</sup> had discussed the idea of a Congress of Nations and an international court. As Americans began to realize that our old policy of isolation was becoming more difficult, and that the political interests of Europe, which had a "very remote relation" to us in Washington's time, were becoming closer, numerous thinkers turned to the policy of an association of nations to maintain peace. In 1910, Theodore Roosevelt said: <sup>81</sup> "It would be a master stroke if those great powers honestly bent on peace would form a league of peace, not only to keep peace among themselves, but to prevent by force if necessary, its being broken by others." The League to Enforce Peace, organized in 1915, of which ex-President Taft<sup>82</sup> and President Lowell<sup>83</sup> of Harvard were distinguished leaders, aimed to create a league of nations pledged to use their military and economic forces against states that resorted to war without first exhausting the possibilities of arbitration. Eighteen state legislatures passed resolutions indorsing this plan; and at the annual convention of the League in 1916, Senator Lodge said: "I think the next step is that which this League proposes, and that is to put force behind international power."

<sup>77</sup> It is interesting to note that, in his doctoral thesis written thirty-five years earlier, Woodrow Wilson had pointed out the danger under the American system that, in foreign affairs, the President might be of one party and the Senate of another. See his *Congressional Government* (1884).

<sup>78</sup> E. York, *Leagues of Nations* (1919).

<sup>79</sup> *Essay on War* (1837).

<sup>80</sup> *An Essay on a Congress of Nations* (1840).

<sup>81</sup> In his Christiania address upon receiving the Nobel Peace Prize. See the *Outlook*, XCV, 19. See also his *America and the World War* (1915).

<sup>82</sup> T. Marbury, ed., *Taft Papers on the League of Nations* (1920).

<sup>83</sup> *A League to Enforce Peace*, in pamphlets of World Peace Foundation (Oct., 1915).

On the question of our relation to Europe after the war, American opinion differed. The political isolationists insisted that America must have no connection with a League of Nations. The adherents of the new policy believed that the United States should become an active member of such an association. Those who wished to harmonize the two policies believed that the United States should either join the League with reservations that would safeguard our sovereignty and national policies, or that we should coöperate with the League as an associate member or with such restrictions that we would not be entangled in disputes of a purely European nature. In general, the middle policy has been followed during the last decade. In spite of the unwillingness of the United States to enter into the League, a return to the policy of isolation was impossible, and the United States has been actively interested in world politics since the Great War. The Republican platform of 1924 described the foreign policy of that party as one of "coöperation without entangling alliances."

Many who opposed the particular form of the Wilson League favored some sort of association of nations or were willing to have the United States become a member of the World Court. In many important European conferences the United States has been represented by "unofficial observers," who have nevertheless taken prominent part. By this method the President avoids the necessity of securing the consent of the Senate to the settlement of delicate international questions, and new possibilities in the direction of executive control of foreign affairs have appeared. When other nations took the position that, having failed to enter the League, we had no voice in the settlement of post-war problems,<sup>84</sup> the Republican administration took sharp issue. Secretary of State Colby had already said: "The United States, as a participant in that conflict and as a contributor to its successful issue, cannot consider any of the Associated Powers, the smallest not less than herself, debarred from the discussion of any of its consequences."<sup>85</sup> A little later, Secretary of State Hughes said: "The right accruing to the allied and associated powers through the common victory is shared by the United States and there could be no valid or effective disposition of the overseas possessions of Germany, now under consideration, without the assent of the United States."<sup>86</sup>

<sup>84</sup> For example, the division of the oil resources of Mesopotamia, the disposition of the island of Yap, and the Lausanne Conference.

<sup>85</sup> *New York Times*, Nov. 26, 1920.

<sup>86</sup> *Ibid.*, Apr. 7, 1921.

In more direct ways the United States participated in world affairs. At the Washington Conference, called by President Harding in 1921, the leading maritime powers reached an agreement to limit the tonnage of battleships; and the Anglo-Japanese Alliance, unpopular in the United States and in the British Dominions, was replaced by a Four Power treaty in which the United States, Great Britain, France, and Japan agreed "to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean." Limitations were also placed on fortifications and naval bases in the Pacific area.<sup>87</sup> The objections urged by Republican leaders to the League of Nations might with equal force be urged against these agreements. The Four Power treaty involves the United States in an entangling alliance, and the limitations on naval construction and on fortifications deprive Congress of its right to determine our military program. One effect of this conference was to strengthen friendly relations between the United States and Great Britain. The more recent three-power naval conference (1927), including the United States, England, and Japan, was less successful in reaching an agreement, but indicated the willingness of the United States to take active part in international coöperation.

In settling the questions of reparations, the American government stated that it would "view with favor the acceptance by American experts of invitations to participate in the work of the Committees"; and the "Dawes Report" was largely the work of the American members. In the London Conference which met to consider its adoption the United States was officially represented. The settlement of the debts owed to the United States by foreign nations, on which American opinion is widely divided, will involve the United States in foreign problems for years to come. In refusing to recognize Soviet Russia and in refusing the right of revolution to the peoples of Honduras and Nicaragua, the United States has been criticized for abandoning the principle that government rests upon the consent of the governed.

One effect of the World War was an increased realization of the power of the press and of propaganda in determining the foreign

<sup>87</sup> On the Washington Conference, see *Official Proceedings* (Washington, 1922); A. H. Abbott, "The League's Disarmament Activities and the Washington Conference," in *Political Science Quarterly*, XXXVII, 1-24 (Mar., 1922); H. C. Bywater, "The Limitation of Naval Armaments," in *Atlantic Monthly*, CXXIX, 259-269 (Feb., 1922); *Senate Docs.*, 67th Congress, 2nd sess., No. 124 for text of treaties; R. L. Buell, *The Washington Conference* (1922); M. Sullivan, *The Great Adventure at Washington* (1922).

policy of modern democratic states.<sup>88</sup> The Committee on Public Information, with George Creel as chairman, carried on a mammoth campaign of popular education during the war for the purpose of making clear America's purposes, of presenting the case of the allies in its most favorable light, and of pointing out the dangers of German imperialism. It published a daily newspaper, issued millions of pamphlets, directed numerous speakers, provided patriotic films and posters, and established press agencies in allied and neutral countries. Similar methods were used in selling Liberty bonds. Never before had the advertising methods of business been applied on so large a scale to the work of influencing public opinion.<sup>89</sup> Government interference with freedom of speech and the policy of the government toward political offenders were severely criticized.<sup>90</sup>

Another result of the World War and of the rise of the United States to a position of world power was a widespread demand for a more dignified and efficient foreign service. The unfortunate experience of President Wilson at the Peace Conference, and the ignorance and inexperience of the American envoys, brought home to thoughtful Americans the defects in our system of foreign representation. The Rogers Act of 1924, which combined the diplomatic and consular services into a single, classified foreign service, was a step in the direction of creating a professional and competent group of trained men in this field of government.<sup>91</sup>

#### 4. THEORIES OF PACIFISM, MILITARISM, AND INTERNATIONALISM

From the colonial period of American history, a strong body of opinion opposed to war was manifest. The Mennonites and Quakers taught non-resistance and peace as a part of their religious creed, and refused military service. William Penn carried Quaker principles into practice in Pennsylvania,<sup>92</sup> and advocated a permanent international congress and compulsory arbitration of international

<sup>88</sup> R. L. Poole, *The Conduct of Foreign Relations Under Modern Democratic Conditions* (1924).

<sup>89</sup> H. D. Lasswell, *Propaganda Technique in the World War* (1927); G. Creel, *How We Advertised America* (1920).

<sup>90</sup> Z. Chafee, Jr., *Freedom of Speech* (1920).

<sup>91</sup> T. H. Lay, "Foreign Service Reorganization," in *American Political Science Review*, XVIII, 164 (Nov., 1924).

<sup>92</sup> I. Sharpless, *A Quaker Experiment in Government* (1902).



disputes.<sup>93</sup> Throughout the entire history of the United States the Quakers continued to urge opposition to war and to take a leading part in the organization of peace societies.<sup>94</sup> Benjamin Franklin wrote in opposition to war during the Revolutionary period,<sup>95</sup> and the maintenance of a standing army in the colonies was one of the main grievances against the British government. After the winning of independence, opposition to a standing army was widespread and was made one of the cardinal principles of the Jeffersonian party. It was felt that a permanent military establishment was dangerous to the liberties of a free people, and that the civil authority should be superior to the military. D. L. Dodge, a New York merchant, began an agitation against war in 1809, in view of the impending struggle with England. He based his opposition on the fact that war is contrary to the teachings of the New Testament.<sup>96</sup> Noah Worcester, editor of *The Friend of Peace*, was also influential.

The New York and Massachusetts Peace societies were organized in 1815; and the American Peace Society in 1828. Many abolitionists opposed the use of force, both at home and abroad, and pacifist theories were especially strong in the North at the time of the Mexican War. Many writers during the first half of the century analyzed the causes of war, attacked its evils,<sup>97</sup> and put forward plans of international conciliation or of world organization. William Ladd's essay<sup>98</sup> was one of the first to treat human nature as it actually is, and to suggest a practicable political machinery instead of a utopian scheme. He proposed a Congress of Nations, in which each country should have one vote, to adjust quarrels that could not be settled by law, and a Court of Nations, to settle justiciable disputes according to the principles of international law. Elihu Burritt, the "learned blacksmith" of New England, traveled and spoke extensively in Europe and contributed to peace sentiment at home and abroad. The Civil War checked the growth of peace philosophy, but the movement again gained headway after its close. The labor movement was strongly pacificistic, various religious

<sup>93</sup> In his *Essay Towards the Present and Future Peace of Europe* (1693).

<sup>94</sup> See the *Friend's Intelligencer*, Jan. 22, 1916; E. D. Mead, *The Literature of the Peace Movement*. Pamphlet of the International School of Peace, now World Peace Foundation.

<sup>95</sup> "On War and Peace" (1788), in *Old South Leaflets*, VI, 162.

<sup>96</sup> *The Mediator's Kingdom Not of this World* (1809).

<sup>97</sup> N. Worcester, *Solemn Review of the Custom of War* (1814); J. Dymond, *Inquiry into the Accordancy of War with the Principles of Christianity* (1834); W. E. Channing, *Discourses on War* (new ed., 1903); C. Sumner, *The True Grandeur of Nations* (1845).

<sup>98</sup> *Essay on a Congress of Nations* (1840).



organizations opposed war,<sup>99</sup> and numerous associations were formed to further the cause of peace.<sup>100</sup>

While the earlier peace philosophy was based largely on religious, humanitarian, and sentimental arguments, and while this line of attack continued,<sup>101</sup> the later peace movement placed chief emphasis on more scientific and rational arguments. One group of writers attacked war from the biological viewpoint and pointed out the deteriorating effect of war on the human race. Statistical studies were made to prove that modern war destroys the most desirable elements of the race stock, by exposing the pick of the young manhood of the nation to the heavy casualties of battle and to the ravages of disease under the unsanitary conditions in which war is carried on.<sup>102</sup> In opposition to the arguments of those who claimed that war was a part of the natural process of the struggle for existence and the survival of fittest, they pointed out that it reversed that process and resulted in the survival of the unfit. The biological laws governing the struggle for existence do not apply to human beings as to the lower forms of life, because of man's ability to modify his environment and to direct his destiny; and the laws of evolution apply to individuals and not to groups. The value of mutual aid as a factor in evolution was also emphasized.

Another group of writers attacked war because of the economic evils that accompanied it.<sup>103</sup> The cost of war and of preparedness for war, the destruction of property that resulted, and the suspension of productive labor were pointed out. The increase of public debts and the heavy taxes caused by war burden the following generations, and fall with special severity upon the masses. The increased cost of living creates social unrest and often leads

<sup>99</sup> The Salvation Army; the Church Peace Union; the World Alliance of Churches.

<sup>100</sup> The American Association for International Conciliation (1906); the American Society for the Judicial Settlement of International Disputes (1910); the World Peace Foundation (1910); the Carnegie Endowment for International Peace (1910).

<sup>101</sup> C. E. Jefferson, *Christianity and War* (1915); W. E. Wilson, *Christ and War* (1915); A. Repplier, "Christianity and War," in *Atlantic Monthly* (Jan., 1915); D. W. Lyons, *Christian Equivalent of War* (1915); L. A. Mead, *Swords and Plowshares* (1912); J. Addams, *Newer Ideals of Peace* (1907).

<sup>102</sup> D. S. Jordan, *War and Waste* (1900), *The Human Harvest* (1906), *War and Manhood* (1910), *The Blood of the Nation* (1910), *War's Aftermath* (1914), *War and the Breed* (1915); V. Kellogg, *Beyond War* (1912), "Eugenics and Militarism," in *Atlantic Monthly*, CXIX, 99-108 (1912); G. W. Nasmyth, *Social Progress and the Darwinian Theory* (1916).

<sup>103</sup> H. C. Emery, *Some Economic Aspects of War* (1914); A. S. Johnson, *Commerce and War* (1915); D. S. Jordan, *War and Waste* (1913), *The United Empire* (1912).

to social disturbance and revolution. Numerous writers pointed out that economic life had become international, that injury to one nation injured the others, and that no nation, even though victorious, could show an economic gain after a serious war.<sup>104</sup> It was argued that the transfer of territory or the payment of indemnities did not increase the prosperity of the mass of the people in the victorious state. It was pointed out that the small, peaceful nations, such as Holland, Switzerland, and Denmark, were more prosperous than the great imperialist states. The economic causes of conflict among nations were carefully studied, especially by the Socialists, who viewed war as the result of capitalistic selfishness. They pointed out the influence of trade rivalry, of the desire for commercial expansion, for raw materials, and for the investment of capital in undeveloped regions, and the danger of imperialistic exploitation and colonization.

Other writers attacked war because of its political effects.<sup>105</sup> They argued that war produced centralization of power and a reduction of personal liberty, that it was undemocratic in its influence and led to undue interference with freedom of speech and of opinion, that it created a military class which was aristocratic in sentiment. They also pointed out that war delays or prevents internal reforms working through normal channels, and that reactionary governments sometimes welcome wars as a means of checking radical opinions. The increase of crime and the disrespect for law and authority which follow a period of war were also emphasized.

Other writers reëxamined the earlier doctrines of race supremacy and of race prejudice,<sup>106</sup> especially the theory of Teutonic supremacy advocated by Burgess<sup>107</sup> and Madison Grant,<sup>108</sup> and urged a cosmopolitan understanding and an "international mind."<sup>109</sup> The underlying causes of nationality were investigated, and the doctrine that national spirit should be expressed in the

<sup>104</sup> This point of view was much discussed after the publication of N. Angell's *The Great Illusion* (1909). See also his *America and the New World State* (1914).

<sup>105</sup> D. P. Kingsley, *Democracy versus Sovereignty* (1915); A. L. Lowell, *Public Opinion in War and Peace* (1923); D. S. Jordan, *Imperial Democracy* (1899); W. Lippmann, *Liberty and the News* (1920), *Public Opinion* (1922), *The Stakes of Diplomacy* (1915); Z. Chafee, *Freedom of Speech* (1920).

<sup>106</sup> F. H. Hankins, "Race as a Factor in Political Theory," in C. E. Merriam and H. E. Barnes, eds., *Political Theories: Recent Times* (1924), Ch. XIII.

<sup>107</sup> In his *Political Science and Comparative Constitutional Law* (1890).

<sup>108</sup> In his *The Passing of the Great Race* (1916).

<sup>109</sup> N. M. Butler, *The International Mind* (1913).

cultural rather than in the political field was put forward. It was argued that nationalism no longer corresponds to the actual facts of life, that economically and culturally men are world-citizens; only politically are they national, because juridical ideas have fallen behind the facts.<sup>110</sup> The absolute sovereignty of the national state, with its corollary of expansion and imperialism, was attacked as an obstacle to world organization and world peace.

Some writers, admitting the virtues, such as courage, discipline, and self-restraint, which are developed by war and by military training, attempted to find a substitute which would develop such virtues without inculcating the military spirit and without the losses and dangers of war. They suggested an organization for constructive labor, with discipline and training, but for the purpose of conquering nature or of performing useful public services.<sup>111</sup>

Arbitration as a means of settling international disputes was generally accepted in the United States. In 1835, under the influence of Ladd, the Senate of Massachusetts adopted resolutions favoring an international tribunal of arbitration. In 1842 William Jay proposed a treaty of arbitration with England. In 1874 the United States Senate adopted a resolution favoring arbitration, and in 1882 the message of President Arthur took the same stand. In 1889, at the first Pan-American Conference, the United States favored advanced arbitration agreements. In 1890 Congress approved a resolution favoring treaties of arbitration with all powers. In 1896 President Cleveland favored an advanced arbitration treaty with Great Britain; in 1910 President Taft advocated unreserved arbitration; and in 1913 Secretary of State Bryan proposed a plan whereby no dispute should become a cause of war until reviewed by an international commission. The United States participated actively in the Interparliamentary Union, took a prominent part in the Hague Conferences, and settled many serious disputes by the process of arbitration.<sup>112</sup>

<sup>110</sup> C. J. H. Hayes, *Essays on Nationalism* (1925); J. H. Robinson, "What Is National Spirit?" in *Century Magazine* (1916); W. McDougall, *The Indestructible Union* (1925); M. Handman, "The Sentiment of Nationalism," in *Political Science Quarterly*, Mar., 1921; C. C. Josey, *Race and National Solidarity* (1923); H. M. Stephens, "Nationality and History," in *American Historical Review*, Jan., 1916; T. Veblen, *An Inquiry into the Nature of Peace and the Terms of Its Perpetuation* (1917).

<sup>111</sup> W. James, *The Moral Equivalent of War* (1910); H. R. Marshall, *War and the Ideal of Peace* (1915); G. M. Stratton, *The Psychology of the War Spirit* (1915).

<sup>112</sup> J. B. Moore, *History and Digest of International Arbitrations to Which the United States Has Been a Party* (1893-1894).

While the earlier proposals for world organization, such as those of Penn and Ladd, had received little serious consideration from practical statesmen, beginnings were made in the formation of various international administrative unions,<sup>113</sup> the Interparliamentary Union, and the Hague Court. The idea was revived in the twentieth century, and was given great impetus by the World War, and by the efforts to establish a League of Nations and a permanent World Court. Many writers favored some form of world federation.<sup>114</sup> They argued that nationalism and the conception of national sovereignty exalted the rôle of force and led to war; that nationalism had done its work and now obstructed progress; that just as the national state had replaced feudalism, so world federation might replace the national state. They believed that there was no necessary connection between nationality and political organization, that various nationalities might live successfully in the same state, that cultural interests are international in nature and scope, that commerce and finance have become internationalized, and that economic isolation is no longer possible. The war to end war was to be followed by a world organization in which law would replace force in international relations. Limitation of armaments and the control of the private manufacture of munitions were also urged.

Just as the doctrine of imperialism, which justified the expansion of the more powerful nations at the expense of the weaker peoples, attacked the theory of the equality of states, so the theory of internationalism, with its attempt to establish some form of world organization and control and to make international law a reality, conflicted with the theory of the absolute sovereignty of states. The supporters of internationalism argued that the doctrine of sovereignty, as a characteristic which placed states above international law, must disappear or must be qualified to admit the fact that states are bound to observe the rules of international law, and to submit to some form of international organization. The theory

<sup>113</sup> P. S. Reinsch, *Public International Unions* (1911); F. B. Sayre, *Experiments in International Administration* (1919).

<sup>114</sup> B. F. Trueblood, *Federation of the World* (1899); R. L. Bridgman, *World Organization* (1905), *First Book of World Law* (1911); D. J. Hill, *World Organization as Affected by the Nature of the Modern State* (1911); N. M. Butler, *The International Mind* (1913); F. C. Hicks, *Internationalism* (1913); S. P. Duggan, ed., *The League of Nations* (1919); E. Balch, *A World Court in the Light of the United States Supreme Court*; H. Kallen, *The League of Nations* (1919); Academy of Political Science, *Proceedings*, July, 1917; American Society of International Law, *Proceedings*, Apr., 1917; L. Rogers, "Political Philosophy and a League of Nations," in *Political Science Quarterly*, Mar., 1919.

of sovereignty, with its idealization of the state, was a serious obstacle to the growth of a rational system of international relations. Numerous American writers discussed this problem and urged that the theory of international law be brought more closely into relation with the actual facts.<sup>115</sup>

While American political thought in general was anti-militaristic, and a considerable part of it was anti-imperialistic, there were also apologists and defenders of militarism, outspoken supporters of imperialism, and firm believers in preparedness. Some of the leading sociologists taught that war was an important factor in evolution and that it provided a crude method of selection of the strong and aggressive types and led to the elimination of the unfit.<sup>116</sup> They argued that the lives of individuals and of nations were analogous and that both were subject to the evolutionary law of competition, which when applied to nations was called "Social Darwinism."<sup>117</sup> Other writers argued that war was not contrary to the divine will, but that it was an "ordinance of God."<sup>118</sup> Some declared that war was inevitable, resulting from the fundamental characteristics of human nature, and that disarmament and arbitration were futile unless the laws of nature were changed.<sup>119</sup>

Roosevelt emphasized the importance of preparedness and opposed arbitration when applied to questions affecting "national honor." He believed that nations should fight for their ideals of justice. He said: "It must ever be kept in mind that war is not merely justifiable, but imperative, upon honorable men and upon an honorable nation, when peace is only to be obtained by the sacrifice of conscientious conviction or of national welfare. A just war is in the long run far better for a nation's soul than the most prosperous peace obtained by an acquiescence in wrong or injus-

<sup>115</sup> E. M. Borchard, "Political Theory and International Law," in C. E. Merriam and H. E. Barnes, eds., *Political Theories: Recent Times* (1924), Ch. IV; T. Veblen, *An Inquiry into the Nature of Peace* (1919); J. Goebel, Jr., *The Equality of States in International Law* (1920); C. E. Merriam, *History of the Theory of Sovereignty Since Rousseau* (1900); G. H. Sabine and W. J. Shepard, "Introduction" to Krabbe, *The Modern Idea of the State* (1922); H. J. Laski, *The Foundations of Sovereignty* (1921); R. T. Crane, *The State in Constitutional and International Law* (1907).

<sup>116</sup> W. G. Sumner, *War and Other Essays* (1911), "War," in *Yale Review*, Oct., 1911; F. J. Giddings, *Democracy and Empire* (1901).

<sup>117</sup> H. Lea, *The Valor of Ignorance* (1909).

<sup>118</sup> Rear Admiral Luce, "The Benefits of War," in *North American Review*, CLIII, 672-683 (Dec., 1891); H. Maxim, *Defenceless America* (1915), 46-55; R. Speer, "Jesus and War," in Pamphlet 35 of Navy League of the United States.

<sup>119</sup> H. Lea, *The Valor of Ignorance* (1909), *The Day of the Saxon* (1912).



tice.''<sup>120</sup> Various associations were formed in the United States to urge the need of preparedness, and to arouse public opinion on the importance of international problems.<sup>121</sup>

Because of its geographical position, interest in America was greater in naval development than in the creation of a large standing army. The importance of sea power and of the control of sea routes was emphasized especially in the writings of A. T. Mahan. His books<sup>122</sup> were read widely both in America and in Europe, and exerted a considerable influence on the adoption of a sea policy by Germany. Mahan argued that control of the sea was the decisive factor in many of the greatest wars in history. He believed that war was an important factor in progress, that preparedness was a cheaper form of insurance than the dangers and costs of war to an unprepared nation, and that for many purposes war was preferable to arbitration as a means of settling international disputes arising from the national policies of states. He held that, in the present stage of human development, the desire for peace was not sufficiently widespread to justify a nation in depending upon peaceful solutions alone when questions of national interests were involved.

Other writers pointed out the defenseless position of the United States, the losses occasioned by our unpreparedness in all our wars, the value of war and military training, and the advantages of preparedness as an insurance of peace.<sup>123</sup> During and after the Great War, American political thought gave increased attention to questions of international relations, world organization, colonial policy, economic factors in world politics, and the like. Interest in domestic problems was overshadowed by the difficult questions raised by the new position of the United States as a world power.

<sup>120</sup> *Message to Congress*, Dec. 4, 1906. See also his *Fear God and Take Your Own Part* (1916).

<sup>121</sup> Among these were the Navy League, the Army League, the National Security League, the American Defense League, the American Defense Society, the National Defense League.

<sup>122</sup> *The Influence of Sea Power upon History* (1890); *The Influence of Sea Power upon the French Revolution and Empire* (1892); *The Interest of America in Sea Power* (1897); *The Lessons of the War with Spain* (1899); *Some Neglected Aspects of War* (1899); *The Life of Nelson* (1900); *The Problems of Asia* (1900); *The Interest of America in International Conditions* (1900); *Retrospect and Prospect* (1902); *Sea Power and the War of 1812* (1905); *Armaments and Arbitration* (1912); "The Great Illusion," in *North American Review*, Mar., 1912.

<sup>123</sup> H. Maxim, *Defenceless America* (1916); R. Stockton, *Peace Insurance* (1915); R. M. Johnston, *Arms and the Race* (1915); E. Upton, *Military Policy of the United States* (1907); H. S. Wilkinson, *War and Policy* (1900); L. Wood, *The Military Obligation of Citizenship* (1915).



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## CHAPTER XVI

### THEORIES OF GOVERNMENTAL ORGANIZATION

#### 1. COMPOSITION AND POWERS OF THE ELECTORATE

The period after the Civil War was characterized by a continuation of the process of expanding the electorate and of bringing the machinery both of the parties and of the government under the more direct control of the voters. In this process the theories of the suffrage,<sup>1</sup> of direct *versus* representative government, and of the respective powers of the various departments of government and the checks and balances among them were the subjects of considerable discussion. The widening of the suffrage, begun in the earlier period by the abolition of religious and property qualifications, was continued in the enfranchisement of the former slaves, and in the inclusion of women, first by state action, then by federal constitutional amendment.

Immediately after the Civil War, the general policy was to extend the suffrage to negroes without restriction. It was argued that suffrage was a natural right of all men, that the negro needed the ballot in order to protect his civil rights, and that the party in power would benefit from his votes. Sumner, the most ardent champion of negro suffrage, insisted that there could be no states' rights against human rights. Senator Morton declared that "there is no protection for political and civil rights outside the ballot." The opponents of negro suffrage charged that the negroes were incapable of intelligent exercise of the right, and that, as an inferior race, they were not capable of self-government. After 1877 the negro vote in the South was largely eliminated by various methods of intimidation, mainly illegal,<sup>2</sup> in spite of vigorous pro-

<sup>1</sup> W. J. Shepard, "Theory of the Nature of Suffrage," in American Political Science Association, *Proceedings* (1912), 106; J. G. Heinberger, "History of the Majority," in *American Political Science Review*, XX, No. 1 (Feb., 1926); K. H. Porter, *History of Suffrage in the United States* (1918).

<sup>2</sup> J. A. Hamilton, *Negro Suffrage* (1910); F. G. Guffey, "Suffrage Limitations in the South," in *Political Science Quarterly*, XX, 53-67 (Mar., 1905); E. G. Murphy, *Problems of the Present South* (1904), Ch. VI.

test. After 1890 the Southern states began the process of constitutional restrictions, preventing the negro vote by property qualifications, educational tests, and the payment of a poll tax. Whites who would have been excluded under these provisions were exempted by "grandfather clauses," which permitted descendants of those who were voters in 1867 to register. For a long time the Supreme Court upheld these restrictions,<sup>3</sup> though it finally declared the "grandfather clause" unconstitutional.<sup>4</sup>

The position of the negro in American life and politics received considerable attention.<sup>5</sup> On the one side it was argued that the white race must retain its supremacy, that negro domination in the South could not be permitted, that the welfare of the negroes was best guaranteed by white control, and that the negro was unfitted for democracy.<sup>6</sup> In addition to his exclusion from the suffrage, laws were passed providing for race distinctions,<sup>7</sup> little provision was made for negro education, and "lynch law"<sup>8</sup> was tolerated. Vigorous opposition was made by Northern sympathizers and by negro leaders to the subjugation of the negro.<sup>9</sup> Some negro leaders, such as W. E. B. Dubois, believed that the negro should receive full recognition in accordance with his abilities,<sup>10</sup> insisted upon his right to education, and made eloquent protest against his social humiliation and his political subserviency. Other leaders, such as Booker Washington, paid less attention to political and social equality, but laid chief emphasis upon vocational education and economic opportunity.<sup>11</sup>

The right of women to vote received little attention from the framers of the American Constitution, although Richard Henry

<sup>3</sup> *Williams v. Mississippi*, 170 U.S., 213 (1898).

<sup>4</sup> *Guinn v. United States*, 238 U.S., 347 (1915). See J. M. Mathews, *Legislative and Judicial History of the Fifteenth Amendment* (1909); J. C. Rose, "Negro Suffrage: the Constitutional Point of View," in *American Political Science Review*, I, 17-43 (1906).

<sup>5</sup> A. B. Hart, *National Ideals* (1907), Ch. IV.

<sup>6</sup> G. W. Cable, *The Negro Question* (1890), *The Silent South* (1885); E. G. Murphy, *The Basis of Ascendancy* (1909); A. H. Stone, *Studies in the American Race Problem* (1908); T. N. Page, *The Negro, the Southerner's Problem* (1904); J. M. Meeklin, *Democracy and Race Friction* (1905); K. Miller, *Race Adjustment* (1908).

<sup>7</sup> G. T. Stephenson, *Race Distinctions in American Law* (1910); J. A. Hill, *Negro and Law* (1915).

<sup>8</sup> J. E. Cutler, *Lynch Law* (1905).

<sup>9</sup> R. S. Baker, *Following the Color Line* (1908); W. E. B. Dubois and B. T. Washington, *The Negro in the South* (1901); B. T. Washington, W. E. B. Dubois, and others, *The Negro Problem* (1903); G. S. Merriam, *The Negro and the Nation* (1906); K. Miller, *Race Adjustment* (1908).

<sup>10</sup> *Souls of Black Folk* (1903); *The Negro* (1915).

<sup>11</sup> *The Future of the American Negro* (1900).

Lee favored the principle. An early novelist, C. B. Brown, influenced by the English radicals, especially by the *Vindication of the Rights of Women* of Mary Wollstonecraft, argued for economic independence, legal equality, and political rights for women.<sup>12</sup> Some demand for the enfranchisement of women was heard during the Jacksonian era, and by the middle of the century, as a part of the humanitarian and abolition movements, there was considerable agitation in some quarters.<sup>13</sup> In 1848 a convention was held in Seneca Falls, New York, in which the women drew up a "Declaration of Sentiments," following the style of the Declaration of Independence, and reciting their grievances against men and the grounds of their rebellion.<sup>14</sup> The early demands, however, were met with ridicule. Prejudice increased as women affected mannish costumes and mannish ways<sup>15</sup> and as eccentrics were attracted to the movement. As Secretary Stanton told Mrs. Stanton: "You have the argument, but custom and prejudice are against you." The part played by women in the Civil War and the enfranchisement of the negroes gave a decided impetus to the movement; and the question was discussed in the constitutional conventions of several states.<sup>16</sup>

The Republican platform of 1872 stated: "The Republican party is mindful of its obligations to the loyal women of America for their noble devotion to the cause of freedom. Their admission to wider spheres of usefulness is viewed with satisfaction; and the honest demand of any class of citizens for additional rights should be treated with respectful consideration." As early as 1868 Wyoming extended the suffrage to women. The Supreme Court held<sup>17</sup> that the Fourteenth Amendment did not confer the right to vote upon women, and this decision was followed by numerous petitions to Congress and by attempts to secure a federal constitutional amendment for the purpose. By the end of the century four states had granted the right. For a time the movement made little headway, but after 1906 interest revived, and by 1914 eleven states had conferred full suffrage upon women and several others had given

<sup>12</sup> In his brochure *Alcuin*.

<sup>13</sup> See address of Wendell Phillips, "Shall Women Have the Right to Vote?" (1851). Considerable influence was exerted by the publication in 1869 of John Stuart Mill's *The Subjection of Women*.

<sup>14</sup> E. C. Stanton, *History of Woman Suffrage* (1881), I, 70-71.

<sup>15</sup> For example, the "bloomer" movement.

<sup>16</sup> See the speech of G. W. Curtis in the New York convention in 1867, in *Orations and Addresses*, I, 179-214.

<sup>17</sup> In *Minor v. Happersett*, 21 *Wallace*, 112 (1874).

partial political rights. Meanwhile the demand for nation-wide enfranchisement was making progress. Some desired an amendment that would compel the states to submit the question to the decision of the voters; others supported the original "Susan B. Anthony Amendment" first proposed in 1869, which forbade the United States and the states to withhold the ballot on account of sex. This plan was finally adopted in the Nineteenth Amendment, ratified in 1920.<sup>18</sup>

The arguments in favor of equal rights for women took various forms.<sup>19</sup> The theory that suffrage was a natural right was familiar from its frequent use in connection with the earlier struggle for manhood suffrage and for the enfranchisement of the negro. The doctrine of no taxation without representation was also used by many women who were owners of property. Married women, in particular, demanded freedom from legal disabilities.<sup>20</sup> With the entrance of women into industry it was argued that they needed the vote in order to secure proper legislation concerning hours, wages, and conditions of employment.<sup>21</sup> The American Federation of Labor indorsed women's suffrage in 1886. It was also urged that the vote of women would be more favorable to proper protection of children and to civic betterment, especially in the cities.<sup>22</sup> Considerable impetus was given by the Progressive movement led by Roosevelt. In general it was contended that women would exert a purifying influence in politics.<sup>23</sup> The supporters of equal rights for women argued that the character, intellectual ability, and political capacity of women were equal to those of men and that there was no justice in compelling women to live in a man-made and man-con-

<sup>18</sup> H. St. G. Tucker, *Women's Suffrage by Constitutional Amendment* (1916); C. C. Catt, *Suffrage by Constitutional Amendment* (1917).

<sup>19</sup> Susan B. Anthony and others, *History of Woman Suffrage* (4 vols., 1881-1902); I. H. Harper, *History of the Movement for Woman Suffrage in the United States* (1881-1922); K. H. Porter, *History of Suffrage in the United States* (1918), Chs. VI, IX; J. L. Wilson, *The Legal and Political Status of Women in the United States* (1912).

<sup>20</sup> I. Loeb, *The Legal Property Rights of Married Parties* (1900).

<sup>21</sup> H. Campbell, *Women Wage Earners* (1893); E. Abbott and S. Breckenridge, *The Wage Earning Woman and the State* (1912); E. Abbott, *Women in Industry* (1910); C. D. Wright, *Industrial Emancipation of Women* (1902); F. Kelley, *Some Ethical Gains Through Legislation* (1905); R. C. Dorr, *What Eight Million Women Want* (1910).

<sup>22</sup> M. R. Beard, *Women's Work in Municipalities* (1915); H. C. Bennett, *American Women in Civic Work* (1915).

<sup>23</sup> H. L. Sumner, *Equal Suffrage* (1909); C. C. Catt and N. R. Shuler, *Woman Suffrage and Politics* (1923); E. Abbott, "Are Women a Force for Good Government," in *National Municipal Review*, July, 1915, pp. 437-447.

trolled world.<sup>24</sup> Universal education and the growing economic independence of women did much to break down the opposition to the movement.

The opponents of women's suffrage met the movement at first with ridicule and contempt. Its supporters were considered as publicity seekers or as dangerous radicals. The organized liquor interests opposed the movement vigorously because they feared the effect of women's votes on the prohibition question. It was argued that woman's place is in the home, and that her influence there would decline if she gave her attention to politics. Her best influence, it was held, could be exercised indirectly and non-politically. Public careers for women would destroy deference and chivalry toward the sex, would make women different creatures, and would be bad for the state. Women were adequately represented by the votes of their husbands, sons, and brothers, and the doubling of the vote would entail increased governmental expenditures for campaigns and elections. It was believed that women would take little interest after the first novelty wore off, and that they would be guided by sentiment and emotion, rather than by reason. Much use was made of scientific arguments as to the respective intellectual ability and psychological traits of the sexes.<sup>25</sup> The authority of Scripture was used to show that women were intended by God for a position of obedience, rather than of authority;<sup>26</sup> and much was made of the argument that government rests upon force, and that since women do not perform military duties, they should not take part in government. To this, the women replied that if they did not bear arms, neither did men bear children; and that the danger and the courage required was as great for the latter as for the former.<sup>27</sup>

Educational qualifications for voters were little used in the

<sup>24</sup> W. E. Thomas, *Sex and Society* (1907); H. B. Thompson, *The Mental Traits of Sex* (1903); M. P. Jacobi, *Common Sense Applied to Woman Suffrage* (1894); L. F. Ward, *Psychic Factors in Civilization* (1893), Ch. XXVI; C. P. Gilman, *The Man-Made World* (1907).

<sup>25</sup> W. K. Brooks, "The Condition of Women from a Zoölogical Point of View," in *Popular Science Monthly*, XV, 145-347 (1879); J. Weir, Jr., "The Effect of Female Suffrage on Posterity," in the *American Naturalist* (1895).

<sup>26</sup> Rev. J. D. Fulton, *Woman as God Made Her* (1869). An article in *Harper's Magazine* in 1853 stated that "no kindred movement is so decidedly infidel, so rancorously and avowedly anti-biblical."

<sup>27</sup> For arguments against women's suffrage, see H. R. Johnson, *Woman and the Republic* (1897); S. M. Buckley, *The Wrong and Peril of Woman's Suffrage* (1909); E. D. Cope, *The Relation of the Sexes to Government* (1888); E. McCracken, *The Women of America* (1905); C. Corbin, *Woman's Rights in America* (1910).



earlier period, but are found to-day, in some form, in about one-third of the states.<sup>28</sup> Ability to read or to read and write is the usual requirement. Except in the South, where they are used to exclude the negro voters, and in those states with a considerable number of illiterate naturalized citizens, they have little effect in restricting the suffrage. They are supported by those who believe in the "fitness" theory of the franchise, and opposed by those who believe in the "natural right" to vote. The former argue that illiterates are not competent to decide upon men or measures; the latter claim that literacy is not a test of character or of common sense.

While the size of the electorate was notably increased during the period, the actual control which it exerted over the government was in some ways narrowed and in other ways expanded. The former resulted from the demand for efficiency; the latter, from the demand for democracy in government. The tendency to increase the number of elective officials, which had begun in the Jacksonian period, was checked by the movement for Civil Service Reform<sup>29</sup> and by the Short Ballot movement. With the increase of elective officials, the voters were confronted by a bewildering array of candidates, concerning whose merits they could not form intelligent opinions. Consequently the voters followed blindly the party labels, or at most concentrated attention upon a few principal offices and neglected the remainder of the ticket. Party managers were thus able to fill less conspicuous offices with unfit candidates. The remedy proposed by the advocates of the Short Ballot<sup>30</sup> was to reduce the number of elective officers, concentrate the attention of the voters upon the important officials who share in lawmaking or who exercise large discretionary powers, and have the minor officials chosen by appointment or by civil service tests. Elected officials were to be "conspicuously responsible." This movement made progress in the cities, in connection with the Commission and City Manager

<sup>28</sup> J. B. Phillips, "Educational Qualifications for Voters," in *Univ. of Colorado Studies*, III, 55-62 (Mar., 1906); G. H. Haynes, "Educational Qualifications for the Suffrage in the United States," in *Political Science Quarterly*, XIII, 495-513 (Sept., 1898).

<sup>29</sup> See above, Chapter XIV, Sec. 2.

<sup>30</sup> R. S. Childs, *Short Ballot Principles* (1911), "Ballot Reform; Need of Simplification," in American Political Science Association, *Proceedings*, VI, 65-71 (1909); A. Ludington, "Proposed Methods of Short Ballot Simplification," in American Political Science Association, *Proceedings*, VI, 72-92 (1909); Illinois Constitutional Convention, *Bulletin No. 15*, "The Short Ballot" (1920); C. A. Beard, "The Ballot's Burden," in *Political Science Quarterly*, XXIV, 589 (Sept., 1909); E. D. Bullock, *Short Ballot* (1915); A. M. Kales, *Unpopular Government in the United States* (1914).

plans,<sup>31</sup> but accomplished little elsewhere. Constitutional restrictions and the opposition of professional politicians stood in the way. Public opinion was also influenced by the argument that the proposed reform was an aristocratic movement, intended to remove officials from the control of the voters.

The direct control of the voters over government was also reduced by the multiplication of administrative boards and commissions in both state and nation. In the earlier period of our history, government was a simple affair; but after the middle of the nineteenth century its functions broadened and the legislatures were unable to cope with the numerous problems that confronted them, many of which required expert knowledge. New agencies were created to collect and digest material to serve as a basis for intelligent legislation. Some had their origin in the desire of the legislature to evade action on important questions; others were created to furnish spoils for the party in power; still others were the result of popular demand for agencies of social and industrial betterment. The growth of insurance, banking, railways, and other corporations, and the failure to control them by detailed legislation, led to the creation of boards of experts with large powers, legislative, administrative, and judicial combined. These bodies, composed of experts and usually appointed for long terms, did much to emphasize the idea of efficiency in government.<sup>32</sup> On the other hand the tendency to multiply governmental agencies, with resultant lack of coordination and extravagance in expenditures, led to a decided movement later toward simplification and reorganization.<sup>33</sup>

The principle of plurality election was also attacked, since when there were three or more candidates, a minority of voters might control. To remedy this, various systems of preferential voting were proposed, in which the voters might specify their first, second, and third choices, which should receive consideration in

<sup>31</sup> See below, Chapter XVIII, Sec. 3.

<sup>32</sup> L. A. Blue, "Recent Tendencies in State Administration," in *Annals of the American Academy of Political and Social Science*, XVIII, 434-445 (1901); F. H. White, "The Growth and Future of State Boards and Commissions," in *Political Science Quarterly*, XVIII, 631-656 (Dec., 1903); J. B. Mathews, *Principles of American State Administration* (1917), Ch. VII.

<sup>33</sup> J. C. Pardee, "Government Running Wild," in *Outlook*, CXI, 618-622 (Nov. 10, 1915); H. J. Ford, "Reorganization of State Governments," in *Academy of Political Science, Proceedings*, III, 30-36 (1913); Illinois Committee of Efficiency and Economy, *Report* (1915); Massachusetts Commission on Economy and Efficiency, *Report* (1914); New York Reconstruction Committee, *Report* (1919); G. A. Weber, *Organized Efforts for the Improvement of Methods of Administration in the United States* (1920).

case no candidate received a clear majority of first choices. This device was adopted in many cities, but made little progress elsewhere. Its supporters claimed that it gave each voter a wider choice of candidates, came nearest to guaranteeing election by absolute majority, concentrated attention on issues rather than on personalities, and made unnecessary the cumbersome and expensive system of direct primaries.<sup>34</sup>

While preferential voting aimed to insure success to the majority of the electorate, the system of "proportional representation" aimed to prevent absolute majority control by guaranteeing that minority parties should be represented in proportion to the number of votes cast. The scheme was ardently supported by John Stuart Mill<sup>35</sup> and was advocated in the United States after the Civil War. Certain attempts were made to put it into practice in Pennsylvania and Illinois in the seventies; but interest declined until the last decade of the century, when it was revived by the growing demand for popular control of government. Although widely discussed, the plan received little practical application in the United States, except in the selection of city councils. As applied there, the voters indicate their first, second, third choices, and so forth. A quota is then determined by dividing the total number of ballots by one more than the number of persons to be elected. Candidates who receive the quota of first-choice ballots are elected. Excess votes of these candidates are distributed to the other candidates according to the choices indicated on the ballots, and this process is continued until the proper number of candidates is chosen.<sup>36</sup> This plan strikes a severe blow at the system of party government and leads to the selection of persons representing various interests and sections. Its supporters also claim that it would free the voter from the fear of throwing away his vote and induce more men of independent spirit to enter legislative life.

<sup>34</sup> R. M. Hull, "Preferential Voting and How It Works," in *National Municipal Review*, I, 386-399 (July, 1912); L. J. Johnson, "Preferential Voting," in *National Municipal Review*, III, 83-92 (Jan., 1914); Massachusetts Constitutional Convention, *Bulletin No. 27* (1917).

<sup>35</sup> *Representative Government* (1861). Thomas Hare's *Election of Representatives, Parliamentary and Municipal* (1859) was also widely read in America. For early American discussions of the plan, see S. Sterne, *On Representative Government* (1871); S. Dutcher, *Minority or Proportional Representation* (1872); C. K. Buckalew, *Proportional Representation* (1872).

<sup>36</sup> J. R. Commons, *Proportional Representation* (1907); J. H. Humphrey, *Proportional Representation: A Study in Election Methods* (1911); Massachusetts Constitutional Convention, *Bulletin No. 28* (1919); C. G. Hoag and G. H. Hallett, *Proportional Representation* (1926).

The direct control of the electorate over government was increased by the adoption in 1913 of the Seventeenth Amendment, providing for popular election of United States Senators. The framers of the Constitution had opposed this method of selection because it seemed to tend to an excess of democracy. They finally agreed upon election by the state legislatures because they felt that those bodies would know the qualifications of candidates, and would select men of conservative temper. Besides, Senators chosen in that manner would feel that they represented the entire state, and the national and state governments would be brought together in a helpful way. As early as 1826, however, a movement for direct popular election was started, and after the Civil War the demand assumed large proportions.<sup>37</sup> It was felt that the state legislatures were controlled by bosses or corporations, and that unworthy men were sent to the Senate. Electoral deadlocks frequently occurred, and the work of the legislatures was hampered by the interest aroused in the partisan contests over Senators. To these conditions was added the growing feeling that indirect elections were undemocratic. Numerous proposals for a constitutional amendment were passed by the House after 1893, but were defeated in the Senate. The Populist party favored the change; after 1900 the Democratic party indorsed the proposal; and in 1908 Mr. Taft expressed his approval in his speech accepting the Republican nomination for the Presidency. The original method was defended by a group of Senators,<sup>38</sup> who argued that direct popular election would ultimately upset the federal balance, and would destroy the conservative influence of the Senate, making it too readily responsive to hasty and emotional public sentiment. Many state legislatures passed resolutions favoring popular election, and made provisions for direct popular nomination of Senators. Election by the state legislatures was gradually becoming almost as much of a fiction as the election of the President by the Electoral College. Under these conditions, opposition weakened, and the new plan was written into the Constitution.

The demand for direct democracy also attacked the process of nomination, in which corruption and violence were common. Attempts were first made by state legislation to prevent fraud and

<sup>37</sup> G. H. Haynes, *The Election of Senators* (1906); C. H. Kerr, *The Origin and Development of the United States Senate* (1895).

<sup>38</sup> Especially by Senators Hoar, Chandler, Edmunds, Root, and Depew. See Root's "The Direct Election of United States Senators," in *Addresses*, 257-283.

force.<sup>39</sup> Many, however, urged popular nomination by means of a direct primary.<sup>40</sup> Toward the close of the century the demand for direct nomination made rapid progress, and was supported by most advocates of reform.<sup>41</sup> The belief was general that party machinery had become unrepresentative and undemocratic, and that the caucuses and conventions were controlled by special industrial interests. The nomination of candidates, at first regarded as a party matter in which the public had no concern, came to be considered a public function, which came properly under state regulation, and which should be controlled by the voters themselves. The direct primary movement was animated in part by the democratic desire for wider popular participation in government, and in part by the protest against industrial and social conditions, which were laid to the alliance between the party machines and the large corporations. Opponents of the movement<sup>42</sup> asserted that it would destroy the party system, increase expenditures, place a heavy burden on the electorate, and secure an inferior type of candidate. These objections were ignored and the new device was widely adopted. More recently the evils of the system have become apparent, especially in connection with large expenditures, lack of public interest, and the preparation of pre-primary slates by the party organizations; and at present a decided reaction against it has set in,<sup>43</sup> especially in the Eastern part of the country.

The functions of the electorate were most widely extended by the adoption of the devices known as the initiative, referendum, and recall<sup>44</sup> The extension of democratic control over legislative

<sup>39</sup> See the California and New York laws of 1866.

<sup>40</sup> Early support of this movement included McMillan, *Elective Franchise* (1880); D. B. Eaton, *The Independent Movement in New York* (1880); G. W. Lawton, *The American Caucus System* (1885); A. Stickney, *Democratic Government* (1885); R. M. LaFollette, "The Menace of the Machine," in *Union of Chicago Record* (1897).

<sup>41</sup> C. E. Merriam, *Primary Elections* (1908); E. C. Meyer, *Nominating Systems* (1902); F. W. Dallinger, *Nominations for Elective Offices in the United States* (1907). A strong statement of the arguments in favor of the plan was made in Governor Hughes's message to the Legislature of New York in 1910.

<sup>42</sup> H. J. Ford, "The Direct Primary," in *North American Review*, CXQ, 1 (1909); W. H. Taft, *Popular Government* (1913), Ch. V.

<sup>43</sup> A. B. Hall, *Popular Government*, Bibl., 274-277 (1921); R. Boots, "Direct Primaries," Supplement to *National Municipal Review* (1920); C. E. Merriam, *The American Party System* (1922), 248-274.

<sup>44</sup> E. P. Oberholtzer, *The Referendum in America* (new ed., 1912); W. B. Munro, *Initiative, Referendum, and Recall* (1912); C. A. Beard and B. E. Schultz, *Documents on the State-Wide Initiative, Referendum and Recall* (1912); J. W. Sullivan, *Direct Legislation* (1893); W. F. Wilcox, *Government by All the People* (1912); N. Cree, *Direct Legislation* (1892); A. L. Lowell, *Public Opinion and Popular Government* (1913); J. D. Barnett,



policy resulted from the growing lack of confidence in representative law-making bodies. While there was no general desire to do away with those traditional organs, there was a widespread belief that the electorate should provide itself with some method of checking undesirable legislation and of obtaining desirable laws in case the legislature refused to act. It was to be a "gun behind the door" to be used in times of emergency. The practice of submitting state constitutions to popular vote had come into general use during the Jacksonian period, and referendums had been applied to city charters, municipal franchises, bond issues, and the liquor traffic without arousing much public interest. The proposal to extend the practice to legislation in general aroused wide discussion.

The main arguments<sup>45</sup> put forward by the proponents of the new devices were that the system would give the voters a positive and negative check upon legislatures controlled by political bosses or by special interests, would stimulate popular interest in public questions, would reduce legislative corruption, and would make unnecessary many constitutional restrictions upon the power of the legislatures. As objections to the devices it was urged<sup>46</sup> that the average voter was not capable of judging intelligently on questions of legislation, that many questions could not be successfully solved by a "Yes" or "No" vote, that little interest would be taken in such elections and a minority vote would decide, that the securing of signatures to petitions would be accompanied by fraud, that small organized groups would burden the electorate with issues on which there was little general interest, that the responsibility of legislatures would be diminished and the caliber of their members would decline, and that the distinction between constitutional and statute laws would be further broken down. Conservative men believed that the new methods would further degrade representative government and would lead to the tyranny of the majority and to serious encroachments upon property rights. The discussion over the initiative and referendum brought out clearly the differences between the liberal and the conservative inter-

*Operation of the Initiative and Referendum in Oregon* (1915); F. M. Davenport, "The Use and Abuse of Direct Democracy," in *Outlook*, CX, 677-684 (July 21, 1915); G. H. Haynes, *The Initiative and Referendum* (1917).

<sup>45</sup> For a comprehensive discussion of the merits and defects of the initiative and referendum, see Massachusetts Constitutional Convention, *Debates*, II (1917).

<sup>46</sup> W. H. Taft, *Popular Government* (1913); E. Root, *Experiments in Government* (1913); N. M. Butler, *Why Should We Change Our Form of Government?* (1912); H. C. Lodge, *The Constitution and Its Makers* (1911).



pretations of democracy. The former favored direct popular action, without restrictions; the latter favored indirect and representative government, with numerous checks and balances.

The recall, by which elected officials might be removed by the voters before the expiration of their term of office, was a part of the same movement. Its supporters argued that heredity, life tenure, long terms, and short terms were stages in an evolution through which the voters were securing a more direct control over public officials; and that only through the power of the electorate to remove unsatisfactory officials could they possess a proper check upon government. It was expected to secure a sense of accountability to the public rather than to political bosses, and to make possible, without danger, a longer term with decreased frequency and cost of elections. On the other hand, it was urged that the recall would destroy initiative and independence and make it difficult to secure competent men for public office. Chief objection was made to the proposal to recall judges,<sup>47</sup> which it was believed would prevent able men from serving on the bench, bring the judiciary more directly into politics, and destroy its dignity, honesty, and independence.<sup>48</sup>

While the principle of democracy is generally accepted in American political thought,<sup>49</sup> an able group of writers has pointed out the defects and dangers that accompany democratic government, and some have attacked the basic principles upon which democracy is defended. They argue that democracy is unstable and fragile, and results in the rule of the incompetent and untrained. Social progress, they assert, is always the work of an aristocracy. Popular government is hostile to liberalism, standardizes opinion, opposes new ideas, and results in mediocrity.<sup>50</sup>

<sup>47</sup> W. F. Dodd, "The Recall and the Political Responsibility of Judges," in *Michigan Law Review*, X, 7 (1911); D. Clark, *The Progressive Movement* (1913), Ch. XIII; D. F. Wilcox, *Government by All the People* (1912), Chs. XXIV-XXVI; H. S. Gilbertson, "Conservative Aspects of the Recall," in *National Municipal Review*, I, 204-211 (Apr., 1912).

<sup>48</sup> American Bar Association, *Proceedings* (1911); G. W. Wickersham, *The Changing Order* (1914), Chs. XII-XIII; F. J. Stimson, "Certain Retrogressive Policies of the Progressive Party," in *American Political Science Review*, VII, 149 (1911); President Taft's veto of the resolution to admit Arizona to statehood in 1911 (62nd Congress, 1st sess., 3964); R. G. Brown, "Recall of Judges," in Minnesota Bar Association, *Report* (1911).

<sup>49</sup> V. L. Parrington, *Democracy in American Thought* (1926).

<sup>50</sup> R. A. Cram, *The Nemesis of Mediocrity* (1917); W. Lippmann, *Drift and Mastery* (1914), *Public Opinion* (1922); C. J. Cannon, "Democracy in Question: American Misgivings," in *Atlantic Monthly*, CXXIX, 145 (Feb., 1922); H. Adams, *The Degradation of Democratic Dogma* (1919); H. H. Powers, "The Receding Tide of Democracy," in *Atlantic Monthly*, CXXXIII,

R. A. Cram says: "Democracy has achieved its perfect work and has now reduced all mankind to a dead level of incapacity where great leaders are no longer wanted or brought into existence, while society is unable, of its own power as a whole, to lift itself from the nadir of its own uniformity." E. L. Godkin pointed out that the theory of democracy arose in small states under simple conditions, and that difficult problems were created by unforeseen tendencies, such as the growth in the size of the electorate, the rise of bosses, the growth of corporation influence, the decline in legislatures, and the control over government by the poor and uneducated masses.<sup>51</sup>

The biologists and psychologists frequently took a skeptical view of democracy, and attacked especially the doctrine of equality. They pointed out the inherent differences, physical and mental, among races of mankind, and the inherent differences, physical and mental, among individuals of the same race. The question of racial superiority is much in dispute, and writers are not agreed as to the degree of antagonism between biological facts and democratic theory.<sup>52</sup> Differential psychology, however, attacks decisively the hopes of the earlier equality theorists.<sup>53</sup> It points out the degree to which the mass mind is influenced by emotionalism, suggestion, and prejudice, and the degree to which it can be controlled by propaganda. It opposes the earlier doctrine that human action is dictated by reason, and that the general will is a trustworthy guide. Many writers assert that popular government becomes automatically crowd government, with all the undesirable results that accompany the psychology of crowds. The theory that the extension of democracy will prevent war has also been attacked,

456 (Apr., 1924); H. M. Kallen, *Culture and Democracy in the United States* (1924); J. M. Beck, "The Future of Democratic Institutions," in *American Bar Association Journal*, Aug., 1926; I. Babbitt, *Democracy and Leadership* (1924); H. L. Mencken, *Notes on Democracy* (1926).

<sup>51</sup> *Unforeseen Tendencies of Democracy* (1898); *Problems of Modern Democracy* (1896).

<sup>52</sup> A. A. Tenney, *Social Democracy and Population* (1907); W. Bateson, *Biological Fact and the Structure of Society* (1912); A. G. Keller, *Societal Evolution* (1915); S. J. Holmes, *The Trend of the Race* (1921); E. G. Conklin, *The Direction of Human Evolution* (1921); F. H. Hankins, "Race as a Factor in Political Theory," in Merriam and Barnes, eds., *Political Theories, Recent Times* (1924), Ch. XIII; F. H. Hankins, "Individual Differences and Democratic Theory," in *Political Science Quarterly*, XXXVIII, No. 3 (Sept., 1923).

<sup>53</sup> W. McDougall, *Is America Safe for Democracy?* (1921), *The Group Mind* (1920); C. C. Brigham, *A Study of American Intelligence* (1923); E. D. Martin, *The Behavior of Crowds* (1920); L. Stoddard, *The Revolt Against Civilization* (1922).

and the imperialistic attitude of modern national democracies has been emphasized.<sup>54</sup> There is also a tendency among some philosophers to revive Greek ideals and to prefer a scheme of values incompatible with the open-door philosophy of democracy. They argue that with the disappearance of the old leisure class and the ideals of aristocracy and nobility, and with the demand that leisure be distributed democratically, leisure is either frittered away by the ignorant masses or devoted to piling up economic power. They are disappointed in the spiritual fruits of our political and economic democracy.<sup>55</sup>

On the other hand, there has been a marked revival of democratic spirit in recent American literature, especially in poetry. While Walt Whitman had no successor for a generation, many writers<sup>56</sup> after 1900 made passionate protests against political and social injustice and reflected the profound unrest of the period. Their work indicated the growing interest in social problems caused by the growth of cities and the new industrial conditions, and they exercised an influence on political thought by arousing the conscience of America to the new problems of democracy under present-day conditions.<sup>57</sup>

## 2. POWERS AND RELATIONS OF THE LEGISLATURE AND THE EXECUTIVE

The early confidence of Americans in representative legislative bodies disappeared rapidly after the Civil War. In both state and nation the caliber of their members declined, and their relative importance diminished. Frequent instances of flagrant corruption, subservience to the lobbies of special interests or to the political machine, and disregard of the evident will of the people weakened public confidence.<sup>58</sup> In the states, the importance of the legislatures was reduced by placing many constitutional restrictions upon their powers,<sup>59</sup> and by taking many questions out of their hands

<sup>54</sup> G. H. Blakeslee, "Will Democracy Alone Make the World Safe," in American Antiquarian Society, *Proceedings*, XXVII, 338-374 (1917); P. A. Means, *Racial Factors in Democracy* (1918).

<sup>55</sup> G. Santayana, *Character and Opinions in the United States* (1920); *The Life of Reason: Reason in Society* (1905).

<sup>56</sup> O. L. Triggs, *The Changing Order* (1905); E. L. Masters, *Spoon River Anthology* (1914), *Songs and Satires* (1916); C. Sandburg, *Chicago Poems* (1916); V. Lindsay, *General William Booth* (1916); W. Bynner, *New World* (1915).

<sup>57</sup> L. Untermeyer, *The New Era in American Poetry* (1919).

<sup>58</sup> "Distrust of State Legislatures," in Governors' Conference, *Proceedings* (1913); P. S. Reinsch, *American Legislatures* (1907), Chs. VIII-X.

<sup>59</sup> C. C. Binney, *Restrictions upon Local and Special Legislation in State Constitutions* (1894); H. Croly, *Progressive Democracy* (1914), Chs. XI-XII; A. N. Holcombe, *State Government in the United States* (1916), Ch. V.

by direct provisions in the constitutions themselves. State constitutions became increasingly long and detailed.<sup>60</sup> The movement for direct popular legislation and the creation of numerous boards and commissions<sup>61</sup> to deal with technical questions further weakened the power of the state legislatures, as did the growing independence of the cities under various provisions for municipal home rule.<sup>62</sup> The evolution of state government was characterized by two main tendencies: the decrease of legislative authority, and the increased importance of the electorate. The decline of legislative authority transferred power to the executive and judiciary; the increased importance of the electorate marked a growing popular control over all three branches of government.

The preëminence which Congress enjoyed during the period of Reconstruction was lost, partly because public confidence was destroyed by the scandals of the period, especially the Credit Mobilier, and partly because of the election of more vigorous and aggressive Presidents. The Senate in particular was subject to attack because of the widespread belief that its members were controlled by big business. The demand for direct popular election of Senators and the attack on the autocratic powers of the Speaker of the House were results of the popular protest against the reactionary tendencies of Congress. The belief grew steadily that the President represented public opinion more directly than Congress; and a vigorous executive was often able to appeal to popular sentiment and to secure the adoption of his policies even against the opposition of Congress.

In spite of the decline in the prestige of legislative bodies, the mass of legislation increased steadily. The early individualistic attitude of the American people was replaced by the belief that social and economic evils should be remedied by law; and organizations and lobbies of all sorts agitated constantly for legislation. Under the burden of the numerous bills proposed, debate and discussion on the floors of the legislatures declined, and the important work was done by the standing committees.<sup>63</sup> Some progress was made toward more scientific legislation by the appointment of

<sup>60</sup> W. F. Dodd, *Revision and Amendment of State Constitutions* (1910).

<sup>61</sup> J. B. Cheadle, "Delegation of Legislative Functions," in *Yale Law Journal*, XXVII, 892.

<sup>62</sup> See below, Chapter XVIII, Sec. 2.

<sup>63</sup> L. G. McConachie, *Congressional Committees* (1898); S. W. McCall, *The Business of Congress* (1911); B. L. French, "Subcommittees of Congress," in *American Political Science Review*, IX, 68-92 (Feb., 1915).

special commissions to investigate and report upon particular topics, and by the creation of legislative reference bureaus<sup>64</sup> for the purpose of securing and analyzing information. One effect of this method was a tendency toward more uniform legislation in the various states. Some attention was also given to improving the technique of legislation by the establishment of bill-drafting bureaus and by attempts to draw up definite canons and standards of legislation.<sup>65</sup>

In contrast to the declining importance of legislatures, the executive department gained in prestige and power.<sup>66</sup> The idea of executive leadership was generally accepted, and executive influence over legislation grew steadily.<sup>67</sup> There was also a marked tendency toward administrative centralization and toward increasing efficiency in administration.<sup>68</sup> Various plans of budgetary reform were adopted which gave the administrative departments a larger control over appropriations, in order to prevent the extravagant log-rolling methods of expenditure on the part of legislative bodies.<sup>69</sup> Many factors contributed to the growing importance of the executive. The American people were familiar with powerful executives in business organization and began to demand business methods in government. They also felt that a strong executive could best protect them against the special interests which often controlled the legislative bodies. The development of a permanent and expert administrative organization was the result of the be-

<sup>64</sup> C. H. McCarthy, *The Wisconsin Idea* (1912); F. C. Howe, *Wisconsin: An Experiment in Democracy* (1911); J. A. Lapp, "Making Legislators Law-Makers," in *Annals of the American Academy of Political and Social Science*, LXII, 172-183 (May, 1916).

<sup>65</sup> E. Freund, *Standards of American Legislation* (1917); C. L. Jones, *Statute Law Making* (1912); E. Cleland, "Bill Drafting," in *American Political Science Review*, VIII, 244-251 (May, 1914).

<sup>66</sup> J. H. Finley and J. F. Sanderson, *The American Executive and Executive Methods* (1908); J. P. Hill, *The Federal Executive* (1916).

<sup>67</sup> E. M. Sait, "Participation of the Executive in Legislation," in *Academy of Political Science, Proceedings*, V, 127-140 (1914).

<sup>68</sup> J. B. Mathews, *Principles of American State Administration* (1917); L. D. White, *Public Administration* (1926); G. S. Weber, *Organized Efforts for the Improvement of Methods of Administration in the United States* (1919); L. M. Short, *The Development of National Administrative Organization in the United States* (1923); W. F. Willoughby, *Reorganization of the Administrative Branch of the National Government* (1923).

<sup>69</sup> W. F. Willoughby, *The Movement for Budgetary Reform in the States* (1918); *The Problem of a National Budget* (1918); H. J. Ford, *The Cost of Our National Government* (1910); "Report of the President's Commission on Economy and Efficiency," *House Doc. No. 851*, 62nd Congress, 2nd sess. (1912); E. E. Agger, *The Budget in the American Commonwealth* (1907).



lief that a compromise of some sort must be worked out between democracy and efficiency.<sup>70</sup>

In the states the Governor was given large powers of appointment and of veto, and was expected to formulate and direct a legislative program. He was the most conspicuous representative of the whole people of the state and, with the development of the party system, was the most important party leader holding office in the state. Since he was held responsible by the people, it was inevitable that he should employ his authority to secure the enactment of legislation that was popularly desired. The various plans proposed for the reorganization of state government, and for the coordination of the departments of administration, recognized the Governor as the political leader and aimed to increase his power and responsibility.<sup>71</sup> Success in the Governor's office became recognized as the best stepping-stone to the Presidency. In the national government also the theory and practice of executive leadership was adopted.<sup>72</sup> It was recognized as a proper function of the President to formulate an "administration policy," and to use all legitimate means to secure the adoption of such policy. More and more the people came to look to the President, as the national party leader, to wield a directing and coördinating power in domestic affairs. As Woodrow Wilson said: "His is the only national voice in affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country . . . Its instinct is for unified action, and it craves a single leader."<sup>73</sup>

The adoption of the merit system, which gave a more permanent and skilled administrative personnel, and the movement toward consolidation of administrative departments further strengthened the executive branch of government. Both emphasized the need of centralized responsibility. There was also a strong movement toward

<sup>70</sup> W. H. Allen, *Efficient Democracy* (1907); A. L. Lowell, *Public Opinion and Popular Government* (1913); R. Moley, *The State Movement for Efficiency and Economy* (1917).

<sup>71</sup> M. C. Alexander, "The Development of the Power of the State Executive," in *Smith College Studies in History* (Apr., 1917).

<sup>72</sup> G. Cleveland, *Presidential Problems* (1904); W. H. Taft, *Our Chief Magistrate and His Powers* (1916); W. Wilson, *Constitutional Government in the United States* (1908), Ch. III; L. Rogers, "Presidential Dictatorship in the United States," in *Quarterly Review*, CCXXI, 127-148 (Jan., 1919); S. P. Orth, "Presidential Leadership," in *Yale Review*, X, 449-466 (Apr., 1921).

<sup>73</sup> *Constitutional Government in the United States*, p. 68.



central supervision of local administration which worked in the same direction. The creation of administrative boards and commissions, with large powers, removed important questions from the consideration of both legislatures and courts, and gradually built up a new science of administration and of administrative law.<sup>74</sup> A new type of responsible executive and of administrative expert emerged in American theory and practice. In the early period of our history a strong executive was associated with the idea of monarchy or with autocratic control. Recently, a strong executive has been considered the most trustworthy department of government to safeguard democracy. Legislatures have been associated with special interests, and the courts with conservatism. Public confidence has shifted from them and has been focused upon executive leadership. This tendency was in line with current development in other fields of activity. Combinations in industry, finance, and labor emphasized the importance of executive ability and of centralized power. The growth of the party system consolidated power in the hands of the boss. It was natural to recognize the advantages of this concentrated power, but to attempt to transfer it to a responsible, elected leader. The new conception of democracy, demanding prompt and extensive governmental action, fixed upon the executive as best able to carry out its purposes.

The change in the respective powers of legislative and executive organs, and the tendency toward concentration of powers, led to a reconsideration of the theory of checks and balances and of the separation of powers.<sup>75</sup> The earlier belief that a clear-cut separation of legislative and executive organs was essential to liberty was seriously challenged.<sup>76</sup> It was urged that government was an organic unity that could not successfully be divided into parts, and that coördination was more essential than separation. Many believed that the older doctrine resulted in friction and deadlock, and that the complicated checks and balances endangered rather than protected liberty by enabling special interests to impede or prevent

<sup>74</sup> F. J. Goodnow, *Principles of the Administrative Law of the United States* (1905); L. D. White, *Public Administration* (1926).

<sup>75</sup> W. Bondy, "The Separation of Government Powers," in *Columbia Univ. Studies in History, Economics and Public Law*, V, No. 2 (1896); T. R. Powell, "The Separation of Powers," in *Political Science Quarterly* (June, 1912, Mar., 1913); L. H. Jenks, "The Constitutional Trinity," in *American Mercury* (Mar., 1926).

<sup>76</sup> F. J. Goodnow, *Politics and Administration* (1900); A. L. Lowell, *Essays on Government*, Nos. 1-2 (1888); W. Wilson, *Constitutional Government* (1908), Ch. VIII; H. Croly, *The Promise of American Life* (1909); J. A. Smith, *The Spirit of American Government* (1907), Ch. VI.

the will of the majority from being carried out. Simplification of government and responsible leadership were demanded. F. J. Goodnow argued that the functions of government were twofold—the expression of the will of the state, and the administration of that will—and that the bodies that exercised the first function should supervise and control those that exercised the latter. “Political” officials, who expressed the state’s will, were properly elective; “administrative” officials, who executed the state’s will, should be appointive.

Strong arguments were put forward for the necessity of further coördination of legislative and executive departments. Some believed that the President’s initiative in legislation should be increased and made more direct. President Wilson revived the original practice of appearing in person before Congress to deliver his message; and both Roosevelt and Wilson assumed active leadership in securing the legislation they desired. Many urged that members of the Cabinet should be admitted to the floor of Congress to explain and defend administrative measures;<sup>77</sup> some even desired a constitutional amendment that would make the heads of departments members of Congress, with the right to vote and serve on committees. The advantages of the Cabinet system, as worked out in England, were widely discussed, and some students of government went so far as to urge its adoption in America.<sup>78</sup> The proposal to introduce certain features of the British Cabinet system into the United States was not entirely new. The framers of the Confederate Constitution, familiar with the defects in American practice, provided that “Congress may by law grant to the principal officer in each of the executive departments a seat upon the floor of either House, with the privilege of discussing any measure appertaining to his department.” A committee of the United States Senate in 1881 proposed that members of the President’s Cabinet should have the right to participate in debates in either house of Congress, and should be under obligation to answer questions put to them

<sup>77</sup> W. C. Redfield, “Cabinet Members on the Floor of Congress,” in *World’s Work*, XL, 69-71 (May, 1920); F. E. Leupp, “The Cabinet in Congress,” in *Atlantic Monthly*, CXX, 769-778 (Dec., 1917); M. L. Hinsdale, “The Cabinet and Congress,” in American Political Science Association, *Proceedings*, II, 126-148 (1905); C. Rowell, “The Next Step in Washington,” in *World’s Work*, Mar., 1925.

<sup>78</sup> W. MacDonald, *A New Constitution for a New America* (1921); H. J. Ford, *Rise and Growth of American Politics* (1898), Pt. IV; A. M. Kales, *Unpopular Government* (1914), Chs. XIV-XVI.

by members of Congress.<sup>79</sup> In general, the theory of separation of powers lost ground, and the necessity of securing closer relationship between executive and legislative organs was accepted.<sup>80</sup> The Commission plan of government for cities frankly abandoned the old doctrine; and various proposals were put forward for unicameral legislatures or for the adoption of the Commission plan or the Cabinet system in the states.<sup>81</sup> An interesting plea for a general revision of our constitutional system was made by W. MacDonald in his *A New Constitution for a New America* (1921).

### 3. JUDICIAL ORGANIZATION AND POWERS

No essential change was made in the organization of the judiciary during the period, except for a tendency to lengthen the term of elected judges. Some discussion was carried on concerning the respective advantages of appointment and election as a method of choosing judges.<sup>82</sup> The federal judiciary remained on an appointive basis, but the principle of popular election of judges became firmly intrenched in the states. Various plans were proposed to combine some method of appointment and election. Among these were to allow the Governor to nominate one or more candidates, to allow the state bar association to nominate a candidate, or to allow an elected chief justice to appoint other judges in his court. The system of popular election was especially attacked because of the improper connection between the judges and the political machine in metropolitan areas.<sup>83</sup>

The large powers of the judiciary, especially their right to neg-

<sup>79</sup> *Senate Report No. 837*, 46th Congress, 3rd sess. (1881).

<sup>80</sup> For a recent argument in support of the separation of powers theory, see F. Green, "The Separation of Powers," in *Yale Law Journal*, Feb., 1920.

<sup>81</sup> A. N. Holcombe, *State Government in the United States* (1916), Ch. XIV; "Clear Ideas from Hon. W. S. U'Ren," in *Equity*, XV, 163-164 (July, 1913).

<sup>82</sup> D. B. Eaton, *Should Judges Be Elected?* (1873); L. Hand, "The Elective and Appointive Methods of Selecting Judges," in *Academy of Political Science, Proceedings*, III, 130-140 (1913); H. Harley, "How Shall Judges Be Chosen?" in *Journal of American Judicature Society*, III, 75-90 (Oct., 1919); A. M. Kales, "The Selection and Retirement of Judges," in *American Judicature Society, Bulletin* VI (1916).

<sup>83</sup> H. Harley, "Taking Judges Out of Politics," in *Annals of American Academy of Political and Social Science*, LXIV, 184-197 (Mar., 1916); A. M. Kales, "Methods of Selecting and Retiring Judges in a Metropolitan District," in *Annals of American Academy of Political and Social Science*, LII, 1-12 (Mar., 1914).

ative legislation, were seriously criticized. Many decisions unfavorable to social legislation led to varied attempts to curb the powers of the judiciary and to make it more directly responsible to the electorate. The belief was widespread that the courts favored property, were temperamentally conservative, and clung to the legal and economic doctrines of a past generation; and that they were expanding their power of judicial veto to obstruct desirable social and economic legislation.<sup>84</sup> In such cases the courts were not only exercising judicial authority, but determining questions of public policy as well. They were exercising a political power which enabled them to defeat the public will as expressed in legislation, at least until the Constitution was amended, which was often a slow and difficult process.

A number of states provided for the recall of judges, and the theory of popular recall of judicial decisions was widely discussed. The supporters of this principle argued that, when the legislature and the court disagreed on a question of constitutional interpretation, the decision of the court should not be final, but should be subject to the decision of the electorate.<sup>85</sup> They insisted that the voters rather than the judges should be the final arbiters of the Constitution. As Roosevelt put it: "The people themselves must be the ultimate makers of their own constitution, and where their agents differ in their interpretations of the constitution, the people themselves should be given the chance, after full and deliberate judgment, authoritatively to settle what interpretation it is that their representatives shall hereafter adopt as binding."<sup>86</sup> Considerable opinion, especially in the ranks of the Socialists and of organized labor, favored the complete abolition of the power of the courts to declare laws unconstitutional. It was asserted that such authority had been usurped by the courts and was unsuited to a

<sup>84</sup> G. Roe, *Our Judicial Oligarchy* (1912); A. M. Kales, *Unpopular Government in the United States* (1914), Ch. XVII; F. N. Judson, *The Judiciary and the People* (1913); H. A. Davis, *The Judicial Veto* (1913).

<sup>85</sup> See speech of T. Roosevelt, in Ohio Constitutional Convention, *Proceedings*, 378 (1912); A. M. Kales, "The Recall of Judicial Decisions," in Illinois State Bar Association, *Proceedings*, 203 (1912); W. L. Ransom, *Majority Rule and the Judiciary* (1912); W. D. Lewis, "The Recall of Judicial Decisions," in Academy of Political Science, *Proceedings*, III, 37-47 (1913); W. F. Dodd, "Social Legislation and the Courts," in *Political Science Review*, XXVIII, 1-17 (Mar., 1913); T. Roosevelt, "The Judges, the Lawyers, and the People," in *Outlook*, CI, 1003-1007 (Aug. 31, 1912); W. D. Lewis, "New Method of Constitutional Amendment by Popular Vote," in *Annals of American Academy of Political and Social Science*, XLIII, 311 (Sept., 1912).

<sup>86</sup> Address before the Progressive National Convention (1912).

democratic government.<sup>87</sup> Others, who believed in the principle of judicial review, opposed a decision by a bare majority of the court on constitutional questions, and favored a requirement that legislative enactments should not be set aside except by an unusual majority of the judges.

Shortly after the Civil War a great controversy arose between one group of jurists<sup>88</sup> who favored the codification of state law by the legislature and another group who preferred the gradual development of the law through judicial decisions.<sup>89</sup> The former group attacked the chaotic system which resulted from piecemeal decisions, and placed emphasis on the need for simplification in phraseology and procedure. They believed that a crystallization of the law in statutory form would make it more systematic and more intelligible. The democratic spirit of frontier life in America opposed the English tradition of the law as an inscrutable thing, known only by the lawyers as a class apart from common men. It was believed that codification would remove the anachronisms of the English common law, would set forth the whole body of law in simple terminology, and would eliminate the need for learned commentaries and elaborate reports of cases. Popular recognition of tendencies toward rigid precedents stimulated the demand for the assumption by the legislatures of new social responsibilities and for a readjustment of the judge-made rules to meet new conditions. The opponents of codification distrusted the ability of the legislatures to enact satisfactory codes, and preferred the more elastic and progressive growth from case to case in the courts. They opposed the idea that each man should be his own lawyer. While some steps were taken toward codification, and toward writing the common law into statutory form, the movement in general failed of acceptance, and the courts remained as the chief interpreters of the public conception of justice.

It was a difficult problem to adjust the law to the rapidly changing social and economic conditions, especially in the urban centers.

<sup>87</sup> A. L. Benson, *Usurped Power of the Courts* (1911); W. Trickett, "The Great Usurpation," in *American Law Review*, XL, 356-376 (May-June, 1906); B. F. Moore, "The Judicial Veto and Political Democracy," in *American Political Science Review*, X, 700-709 (Nov., 1916).

<sup>88</sup> Led by D. D. Field, who drafted a code for New York. See also his *Outlines of an International Code* (2nd ed., 1876). This group favored the system of codification proposed and supported by Jeremy Bentham in England. See Bentham's *Constitutional Code* (part published 1830; finally published 1841).

<sup>89</sup> Led by J. C. Carter. See his *Proposed Codification of Our Common Law* (1883); *The Province of Written and Unwritten Law* (1890).



The legalism and formalism of the law, with its conservative background, its respect for precedent, and its underlying theory of individualistic non-interference on the part of the government was challenged by the new "sociological jurisprudence."<sup>90</sup> The leaders in this movement were Justice O. W. Holmes, Jr., and Dean Roscoe Pound. They represented the more liberal and democratic attitude, and believed that the law should be brought into accord with the actual social, economic, and political situation. They were more interested in the working of the law than in its abstract concepts, and stressed its social purposes rather than its sanction. They aimed to bring jurisprudence abreast with the teachings of history, economics, politics, and sociology. As Dean Pound said: "Jurisprudence must accept its place in the field of social sciences and must be more inclined to meet the social needs. The law can no longer, except at the peril of itself and society, refuse to consider the collectivist good rather than to regard the bills of rights of American constitutions as the Magna Charta of human liberty."

Toward the close of the century there was widespread discussion of needed reforms in judicial procedure.<sup>91</sup> The technicalities of legal processes and the endless delays and uncertainties were attacked by business interests, by labor organizations, by students of government, and by lawyers themselves. Formal instead of real issues, and technicalities of procedure instead of the merits of the controversy, seemed to be emphasized by the courts. There were too many trials and too many appeals. The ineffectiveness of criminal trials, and the difficulty of enforcing enacted legislation<sup>92</sup> received

<sup>90</sup> R. Pound, *Interpretations of Legal History* (1923), *The Spirit of the Common Law* (1913), *Introduction to the Philosophy of Law* (1922), "Interpretations of Legal Philosophy: The Need of Sociological Jurisprudence," in *Green Bag*, XIX, 607-615 (Oct., 1907); "Scope and Purpose of Sociological Jurisprudence," in *Harvard Law Review*, XXIV, 591, XXV, 140, 489 (June, Dec., 1911, Apr., 1912); O. W. Holmes, Jr., "The Path of the Law," in *Harvard Law Review*, X, 457 (1897); E. A. Parry, *The Law and the Poor* (1914); R. H. Smith, *Justice and the Poor* (1919); E. A. Ross, *Social Control* (1901); H. E. Barnes, *Sociology and Political Theory* (1923); A. Alvarez, "The New Conception and New Bases of Legal Philosophy," in *Illinois Law Review*, XIII, 167-182 (Oct., 1918). For similar movements outside the United States, see L. Gumplowicz, *Sociologie und Politik* (1892), *Die soziologische Staatsidee* (1892); L. Duguit, *Law in the Modern State* (trans. by F. and H. Laski, 1919); H. Krabbe, *The Modern Idea of the State* (trans. by G. H. Sabine and W. L. Shepard, 1922).

<sup>91</sup> For criticisms of American legal procedure, see H. Stone, *Law and Its Administration* (1915); W. O. Emery, *Concerning Justice* (1914); W. Abbott, *Law and the Modern Man* (1910); F. O. Wells, *The Man in Court* (1917); M. Storey, *Reform of Legal Procedure* (1911); W. H. Taft, *Law Reform* (1915); American Bar Association, *Transactions* (1885), pp. 323-449.

<sup>92</sup> R. Pound, "The Enforcement of Law," in *Green Bag*, XX, 401 (Aug., 1908).



special attention. There was also growing dissatisfaction with the traditional system of trial by jury. Early observers of American life, such as de Tocqueville, had praised the jury system; but more recently there has been a loss of confidence in juries, a tendency to waive the right of trial by jury in civil cases, and to do away with the requirement of unanimous decision in such cases. The difficulties and delays in empaneling juries in criminal cases also became a serious abuse. While the democratization of justice in the middle of the nineteenth century tended to exalt the jury and the lawyers, recent tendencies have been in the direction of increased authority in the hands of the judge.

In no country have legal and political ideas been more closely connected than in the United States. Members of the legal profession have occupied a dominant position in the legislatures and in the administrative positions of the government, as well as in the courts. It has been said that the American system of government was created by lawyers and has been operated by lawyers; and our government has been referred to as an "aristocracy of the robe."<sup>93</sup> This fact has affected the nature of American political thought, giving it a distinct legalistic character.<sup>94</sup> It also helps to explain the peculiarly important position of the courts in the American political system. In spite of frequent attacks upon their power, the judiciary gained in prestige and in influence. They secured their independence of the legislature and their right to veto its acts. They were generally supported by public opinion in their claim to be the special guardians of the rights guaranteed by the Constitution.

After the Civil War, interest centered in the new forms and forces of the rapidly developing industrial situation. In the conflict between the laissez-faire theory of private rights and the new demand for social and economic regulation, the courts occupied an important place. The generally accepted theory viewed the courts as having the authority to protect the rights of persons and property, as guaranteed in the Constitution, against encroachments

<sup>93</sup> For discussions of the important position of lawyers in American politics, see A. L. Lowell, *Essays on Government* (1889), Ch. III; G. H. Haynes, *Representation in State Legislatures* (1900); J. R. Dos Passos, *The American Lawyer* (1907); C. Warren, *History of the American Bar* (1911). For the position of the legal profession in England, see E. Barker, *Political Thought in England from Spencer to Today* (1920), Ch. VI.

<sup>94</sup> T. M. Cooley and others, *The Constitutional History of the United States as Seen in the Development of American Law* (1889); *Two Centuries' Growth of American Law*, by members of the Yale Law School faculty (1901).

by the legislative or executive branches. This was considered by many jurists and publicists as the distinguishing feature of American government.<sup>95</sup> The courts were expected to check hasty and unwise legislation, and to protect the rights of the minority against the tyranny of the majority. In addition to specific constitutional guarantees, the old doctrine of natural and implied rights was frequently revived by the courts to justify their action in negating laws which were considered hostile to public policy.<sup>96</sup> Natural law was the theory on which American bills of rights were based, and the courts clung to it as the orthodox theory of the Constitution.<sup>97</sup>

Since the attack on private rights in property came principally from the state legislatures, the statesmen and lawyers who believed in the laissez-faire principle looked to the federal courts and to the Fourteenth Amendment as the constitutional foundation for their policy of preventing legal interference. The provision that no state shall deprive any person of life, liberty, or property without due process of law, while generally interpreted as safeguarding the emancipated slaves, was also intended to be a restraining clause on state legislatures. Large propertied interests, whose foundations were laid after the Civil War, felt that they could not have a free hand in developing their enterprises unless the state legislatures, which were beginning the process of regulation, were brought under strict federal judicial control. Corporations struggling against legislative interference, as well as the negro rising from bondage, were to be protected against state interference.<sup>98</sup>

At first, however, the Supreme Court refused to accept the broad interpretation of the Amendment. In the *Slaughter House*

<sup>95</sup> J. W. Burgess, *The Reconciliation of Government and Liberty* (1915); A. C. McLaughlin, *The Courts, the Constitution and Parties* (1912); E. S. Corwin, *The Doctrine of Judicial Review* (1914).

<sup>96</sup> *Loan Association v. Topeka*, 20 *Wallace*, 655 (1874). The doctrine of natural rights survived in such works as T. M. Cooley, *Constitutional Limitations* (1890); T. D. Woolsey, *Political Science* (1878); L. Abbott, *The Rights of Man* (1901); J. M. Beck, *The Constitution of the United States* (1924); F. Exline, *Politics* (1922); M. R. Cohen, "Jus Naturale Redivivum," in *Philosophical Review*, XXV, 761 (Nov., 1916); F. M. Taylor, "The Law of Nature," in *Annals of American Academy of Political and Social Science*, I, 558-585 (Apr., 1891).

<sup>97</sup> R. Pound, "Liberty of Contract," in *Yale Law Journal*, XVIII, 454-487 (May, 1909); B. F. Wright, Jr., "Natural Law in American Political Theory," in *Southwestern Political and Social Science Quarterly*, IV, No. 3 (Dec., 1923); F. U. Harper, "Natural Law in American Constitutional Theory," in *Michigan Law Review*, Nov., 1927.

<sup>98</sup> See the argument of Roscoe Conkling before the Supreme Court in the *San Mateo County Case*, Dec. 19, 1882.

cases<sup>99</sup> the majority opinion of the court upheld the police power of the state, refused to broaden the Fourteenth Amendment to restrict state authority over civil liberty, and expressed the view that the Supreme Court should hold an even balance between state and federal power. The dissenting opinions, however, held that the law in question deprived persons of liberty and property, that it violated the Fourteenth Amendment, that "liberty" in the amendment should be interpreted broadly, and that the federal judiciary had the power to decide when state legislation unduly interfered with the liberty and property of citizens. This view gradually became the accepted doctrine of the court. In the *Granger* cases (1876), however, the court still held the general view that a state might regulate business undertakings if they affected public welfare, and said that for "protection against abuses by legislatures the people must resort to the polls, not to courts." Gradually, however, the court moved from the doctrine of non-interference with state legislatures to the doctrine that it should review all kinds of economic legislation by the states. Dicta of the court in previous cases were used as precedents in later cases to build up the power of judicial review.

In the *Minnesota Rate* case,<sup>100</sup> the court set aside a state statute fixing railway rates as an unconstitutional deprivation of property without due process of law. In this case the dissenting opinions asserted that the court had departed from its attitude in the earlier cases. Justice Blatchford stated: "The governing principle of those cases was that the regulation and settlement of the affairs of railways and other public accommodations is a legislative prerogative and not a judicial one. . . . This is just where I differ from the majority of the court. They say in effect, if not in terms, that the final tribunal of arbitrament is the judiciary; I say it is the legislature. . . . It is always a delicate thing for the courts to make an issue with the legislative department of the government, and they should never do it, if it is possible to avoid it. . . . It may be that our legislatures are invested with too much power, open as they are to influences so dangerous to the interests of individuals, corporations, and societies. But such is the Constitution of our republican form of government, and we are bound to abide by it until it can be corrected in a legitimate way."

The court, however, continued to develop the doctrine of judi-

<sup>99</sup> 16 *Wallace*, 36 (1872).

<sup>100</sup> *Chicago, Milwaukee and St. Paul Ry. v. Minnesota*, 134 *U.S.*, 418 (1889).

cial review. It upheld the Anti-Trust law of 1890, but the "rule of reason" it developed did much to break down the intention of the framers of the law. In *Reagan v. Farmers Loan and Trust Company*<sup>101</sup> the court went the whole length in supporting the right of the judiciary to review legislative enactments that conflicted with the rights of liberty and property; and the absence of any dissenting opinion indicates the disappearance of the lingering opposition to judicial supremacy. In the Income Tax case<sup>102</sup> the decision of the Supreme Court clearly operated in the economic interest of the propertied classes, and was sharply criticized by leading economists and publicists, as well as by a considerable element of public opinion. Twenty years of effort were required to secure a federal amendment authorizing a federal income tax. In *Smyth v. Ames*<sup>103</sup> a unanimous opinion of the court declared that the principle "must be regarded as settled" that the judiciary might review economic legislation affecting property rights, and that property affected with a public interest was entitled to a "fair return" on its "fair" valuation. The doctrine of judicial review was fully established, and the courts assumed the power to decide what was "fair" and "reasonable." In *Lochner v. New York*<sup>104</sup> the court set aside a state law fixing the hours of labor in bake shops, on the ground that the right to contract in relation to hours of labor was a part of the liberty guaranteed by the Fourteenth Amendment. Justice Holmes, who represented the new opposition to conservative judicial control of economic legislation, dissented. He declared that the case was decided on an economic theory which a large part of the country did not hold, and that the Fourteenth Amendment did not "enact Mr. Herbert Spencer's *Social Statics*."

The struggle for stable legal principles, at a time of rapidly shifting social and economic forces, placed the courts in a difficult position. As a result the legal and judicial systems of the country became a storm center of public discussion. For a time the orthodox theory was conservative, and the courts were inclined to maintain the status quo and to prevent legislative reform. It was their duty to safeguard the rights guaranteed by the Constitution by a strict and legalistic interpretation. The natural liberty of men to con-

<sup>101</sup> 154 U.S., 362 (1894).

<sup>102</sup> *Pollock v. Farmers Loan and Trust Co.*, 157 U.S., 429, and 158 U.S., 602 (1895).

<sup>103</sup> 169 U.S., 466 (1898).

<sup>104</sup> 198 U.S., 45 (1905).

tract, and the vested interests of property were to be protected against the rash and unconsidered regulations of popularly elected legislatures. The courts held that there were inherent rights of persons and property which the government could not touch, and that the contents of these rights must be preserved, in spite of new social conditions. They stood upon the conservative laissez-faire principles of the English Common Law, and followed the philosophy of precedent contained in the recognized doctrine of *stare decisis*. Justice Field, in the Income Tax Case, said: "The present assault upon capital is but the beginning. It will be the stepping-stone to others larger and more sweeping, until our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness."

The English Common Law, upon which American jurisprudence was based, had developed at a time when the interests of the propertied middle classes were given chief consideration, before the factory system and the working-class movement had arisen. To this original individualistic background were added the doctrines of Herbert Spencer and of the Manchester School of economics. It was assumed that each individual knew his own interests best and that the presumption was against any attempt to expand the functions of government, especially in its relation to industrial conditions.<sup>105</sup> Law was a slow and gradual creation, arising from past human experience and not to be changed lightly. The courts were to discover and apply the fixed rules of justice, and the presumption was against rapid changes or extensive governmental interference.

At the same time the court laid down the general principle that business affected with a public interest might come under public regulation. It also gradually built up the doctrine of the "police power"<sup>106</sup> of the state, under which it had general authority to protect the health, safety, morals, and general welfare of the community. On this basis much legislation, especially in the field of public health and morals, was permissible. This doctrine enabled the court, step by step, to take a less rigid and legalistic attitude

<sup>105</sup> G. G. Groat, *Attitude of American Courts in Labor Cases* (1911); B. F. Moore, *The Supreme Court and Unconstitutional Legislation* (1913); F. Parsons, *Legal Doctrine and Social Progress* (1911); C. G. Haines, *The American Doctrine of Judicial Supremacy* (1914); H. R. Seager, "The Attitude of American Courts Toward Restrictive Labor Laws," in *Political Science Quarterly*, XIX, 589 (1904).

<sup>106</sup> E. Freund, *The Police Power* (1900).



toward new legislation. The storm of protest against the conservative attitude of the courts and their use of judicial review to thwart the will of the legislatures, together with the growing change of public sentiment in favor of extensive governmental regulation, was reflected in a more liberal form of jurisprudence, and in a willingness on the part of the courts to consider broad issues of social welfare and expediency as well as the strict letter of the law and the Constitution. Later decisions upheld statutes that had previously been set aside as unconstitutional. In the case of *Bunting v. Oregon*,<sup>107</sup> the court took for granted the constitutionality of general regulations of hours of labor, although this principle obviously overruled the theory of the *Lochner* case. The court has upheld statutes providing for workmen's compensation<sup>108</sup> and minimum wages,<sup>109</sup> thereby widely extending the police powers of the states. It also supported heartily the conservation policy of Roosevelt. On the other hand, in the decisions opposing the Kansas Court of Industrial Relations<sup>110</sup> and the federal Child Labor Act,<sup>111</sup> the court showed its unwillingness to move too rapidly toward the doctrines of the sociological jurists. In particular, the Supreme Court began to uphold federal legislation in large fields formerly left to the states. The New Nationalism of Roosevelt demanded "of the judiciary that it shall be interested primarily in human welfare rather than property." Recent tendencies show a decided change in the attitude of courts toward laws intended for social and industrial betterment. The judiciary has widened, step by step, the conception of the "police power" of the state, and has become more reluctant to invalidate acts if they can by any legal possibility be approved. The American doctrine of judicial supremacy is rapidly changing, the distinction between constitutional and statute law, especially in the states, is disappearing, and a growing popular sentiment demands legislative omnipotence and unrestricted popular control. With a less hostile attitude on the part

<sup>107</sup> 243 *U.S.*, 426 (1917). In deciding this case the court had before it an illuminating brief prepared in large part by Mr. Brandeis before his appointment to the bench. This brief contained an exhaustive review of legislation in America and abroad regulating hours of labor, as well as a large number of data concerning the effect of overwork on the health, safety, and morals of the worker.

<sup>108</sup> *New York Central R. R. Co. v. White*, 243 *U.S.*, 188 (1917).

<sup>109</sup> *Stettler v. O'Hara*, 243 *U.S.*, 629 (1917). On the general nature of the "police power," see *Sligh v. Kirkwood*, 237 *U.S.*, 52 (1915).

<sup>110</sup> *Wolff Packing Co. v. Court of Industrial Relations*, 43 *Sup. Ct.*, 633 (1923).

<sup>111</sup> *Hammer v. Dagenhart*, 247 *U.S.*, 251 (1918).



of lawyers and judges toward legislative innovations, much of the complaint against the usurped powers of the courts tends to disappear. Many persons again consider the judiciary as a valuable and useful check on the expanding practice of popular law-making.<sup>112</sup>

Among the writers who were influential in urging the social point of view and who opposed the policy of the courts in attacking liberal legislation were J. B. Thayer,<sup>113</sup> Justice O. W. Holmes,<sup>114</sup> E. Freund,<sup>115</sup> F. J. Goodnow,<sup>116</sup> R. Pound,<sup>117</sup> J. H. Wigmore,<sup>118</sup> and T. R. Powell.<sup>119</sup> They attacked the emphasis on mere legality and stressed fundamental questions of justice and right. Experience and expediency, as well as legal logic, were to be given consideration, and changing social conditions were to be met by a growing and elastic jurisprudence. Decisions of courts should be constructive and evolutionary, not merely negative and reactionary. A mechanical and rigid constitution or law, which neglected the human element and the social interests of the community, was barren and dangerous. Notable efforts were made toward the historical, philosophical, and comparative study of law, and toward the view that the jurist should be also a political and social philosopher.

One result of this movement and of the growing democratic spirit of the country was an attack on the difficulty of constitutional amendment. The state constitutions, easily amendable, were becoming elaborate and detailed, containing many provisions of statutory character. For a half-century after the Civil War, however, during a period of unusual change and growth, the federal Constitution had remained unchanged, and a doctrine of literal and rigid construction had become the accepted principle of the courts.

<sup>112</sup> J. H. Daugherty, *The Power of the Federal Judiciary over Legislation* (1912).

<sup>113</sup> *Legal Essays* (1893).

<sup>114</sup> *Common Law* (1881); "The Path of the Law," in *Harvard Law Review*, X, 457-478 (Mar., 1897).

<sup>115</sup> *Standards of American Legislation* (1917).

<sup>116</sup> *Social Reform and the Constitution* (1911); *Principles of Constitutional Government* (1916).

<sup>117</sup> "Courts and Legislation," in *American Political Science Review*, VII, 36 (Feb., 1913); "Limits of Effective Legal Action," in *International Journal of Ethics*, XXVII, 150-167 (Jan., 1917).

<sup>118</sup> *Principles of Judicial Proof* (1913); "The Qualities of Current Judicial Decisions," in *Illinois Law Review*, IX, 529-540 (Mar., 1915).

<sup>119</sup> "The Logic and Rhetoric of Constitutional Law," in *Journal of Philosophy, Psychology, and Scientific Methods*, XV, No. 24 (Nov., 1918); "Umpiring the Federal System," in *Political Science Quarterly*, XL, 191 (Mar., 1925).

After 1880 various writers began to urge a more flexible Constitution and an easier and more popular method of amendment. J. W. Burgess<sup>120</sup> argued that existing conditions, rather than the intentions of the framers, should be the guide to constitutional interpretation. He believed that the small minority, which could prevent a federal amendment in spite of the desire of a large majority, was a source of revolution and danger, and proposed a process by which the larger states should have an influence on amendment more nearly in accordance with their population. The worship of the Constitution was attacked as a "fetish,"<sup>121</sup> and numerous studies of the origin of the Constitution and the purpose of its framers took the position that the Constitution had been adopted in a spirit of reaction, represented the aristocratic and propertied interests of the country, and was deliberately made difficult to amend in order to obstruct popular government.<sup>122</sup> Political leaders, such as La-Follette and Roosevelt, argued for easier methods of amendment; and the platform of the Progressive party in 1912 asserted that a more flexible constitution was essential to social and political progress.<sup>123</sup> Thus both the attitude of the courts and the method of amendment were subjects of controversy, one group advocating the principle that popular will should be quickly and easily translated into fundamental law; the other group insisting upon a permanent, stable constitution as a barrier against hasty and thoughtless public opinion, especially in its attacks on personal and property rights.<sup>124</sup>

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<sup>123</sup> H. A. Croly, *Progressive Democracy* (1914).

<sup>124</sup> C. Warren, *Congress, the Constitution, and the Supreme Court* (1925); F. J. Stimson, *The American Constitution as It Protects Private Rights* (1923).

## THEORIES OF GOVERNMENTAL ORGANIZATION 567

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## CHAPTER XVII

### THEORIES OF GOVERNMENTAL FUNCTIONS

#### 1. THEORIES OF INDIVIDUALISM

The American governmental system was established at a time when the principle of political individualism was generally accepted. Strong government was associated with absolutism and tyranny; and it was held that the more powerful the state, the weaker were the rights of the individual. The individualism of the Fathers was based upon an ideal of liberty; it adopted the philosophy of Locke, and believed in the original state of nature, natural rights, and the social contract. The colonies desired to be free from interference by England; the separate states wished to be let alone by the national government; and the individual citizen opposed governmental interference with his private rights. Local self-government and individual liberty were considered essential to democracy.

The frontier conditions of early American life strengthened the doctrine of individualism, and sometimes confused liberty with the absence of all effective government.<sup>1</sup> The isolation of frontier communities and the simplicity of their civilization emphasized the philosophy of individual effort and made difficult any conception of social unity or collective action. The open continent gave to the pioneer an enlarged view of self. It made his mind a little sovereignty of its own, acknowledging no allegiances and but few obligations. It made for optimism, boastfulness, wastefulness, and the theory that "to the victors belong the spoils" in both business and politics. The frontier point of view was intolerant of administrative experience, and permitted a laxity in governmental affairs that often pressed individual liberty beyond its proper bounds. The "come-outer" movement and the early abolition movement were based upon extreme theories of individualism.

After the Civil War, the theory of individualism was revived

<sup>1</sup>W. Weyl, *The New Democracy* (1912), Chs. III-IV; F. J. Turner, *The Frontier in American History* (1920).

on a new basis and for a new purpose. The transformation of the United States from a rural, agricultural nation into an urban, industrial nation raised new problems of the functions of the state. The growth of large-scale business organizations, of combinations and monopolies, and of labor organizations raised the question of the degree to which the state should regulate or control these associations. The conditions under which the laboring classes worked and lived led to discussion of the desirability of legislation for social and economic betterment. Questions of taxation, subsidies, tariffs, and government ownership all raised the issue of the relation of the state to the new economic forces, and the degree to which its control over them should be extended. Those who opposed governmental interference developed a new phase of the individualistic doctrine, emphasizing economic, rather than political, freedom, and basing their arguments on the economic theory of Mill and Adam Smith and the sociological theory of Herbert Spencer, rather than on the political theory of John Locke. The industrial individualism of the second half of the nineteenth century was based upon the doctrine of laissez-faire.

It held that business prosperity could be best secured by permitting the natural economic laws of supply and demand, of free competition, and of governmental non-interference to work themselves out. The fact that the earlier regulations, which were adapted to the needs of rural, agricultural conditions, were ill-fitted to the needs of the new industrial conditions led many to argue for the abolition of all regulations. It was asserted that American prosperity was the result of the initiative, enterprise, and self-reliance of individuals, that these qualities were typically American, and that they would be destroyed by a policy of paternalism on the part of the government. In particular, these qualities were imputed to the "captains of industry," whose genius had made possible the remarkable achievements of the period. Corporations desiring to avoid taxation or regulation, and employers desiring to avoid legislation in the interest of laborers, argued for a minimum of governmental control. The class, in general, that had favored a strong government in the earlier period of American history now adopted the point of view that a vigorous government was dangerous to economic prosperity. They were willing to have the state grant franchises and give subsidies and tariff protection, but they opposed the doctrine that the state should restrict or regulate business activities or interfere in the conditions under which their

enterprises were carried on. At first they opposed interference on the ground that business was a private matter; later, on the ground that the remedies proposed were inappropriate or unconstitutional; more recently, on the ground that successful international competition demanded freedom on the part of large combinations in this country.

The theory of economic individualism appeared in the writings of economists and political scientists, in the speeches and writings of politicians and statesmen, and in the statements of business men and business associations. Economists argued<sup>2</sup> that the "natural laws" of industry should not be interfered with by governmental regulations; the free play of social forces was preferable to legal adjustments. Political scientists, such as T. D. Woolsey<sup>3</sup> and J. W. Burgess,<sup>4</sup> lamented the decline of liberty, and feared the absolutism and tyranny that would result from state control. They believed that the people were inclined to lodge too much power in their governments and that governments were likely to overstep their power. Political scientists of this school followed the earlier teachings of Francis Lieber.<sup>5</sup> Publicists, such as Taft, Root, Lodge, Butler, and Hill, adopted a conservative attitude, stressed the value of free action, and opposed "overlegislation."<sup>6</sup> Associations of business men asserted vigorously the doctrine of non-interference, stressed the value of industrial liberty, and insisted upon the rights of employers and of property owners.<sup>7</sup> The theory of individualism based its arguments in part on the philosophical doctrine that freedom was essential to the harmonious development of the individual,<sup>8</sup> that overgovernment weakened individual character, and that individualism alone furnished a rational foundation for a philosophy of right and justice. It also drew support from the scientific principle of evolution and the survival of the fittest. It held that each individual was the best judge of his own interests and should be left to work out his own destiny without the guidance

<sup>2</sup>D. A. Wells, *Recent Economic Changes* (1889); W. G. Sumner, *What Social Classes Owe to Each Other* (1883), *The Forgotten Man* (1887), *The Challenge of Facts* (1914).

<sup>3</sup>*Political Science* (1878), I, Pt. II, Chs. IV-V.

<sup>4</sup>*The Reconciliation of Government with Liberty* (1915).

<sup>5</sup>See above, Chapter IX, Sec. 3.

<sup>6</sup>W. H. Taft, "The Duty of the State"; E. Root, "The New Toryism"; H. C. Lodge, "The Coming Slavery"; D. J. Hill, "The Man versus the State"; E. H. Gary, "Over-Legislation," in T. Beale, ed., *The Man versus the State* (1916).

<sup>7</sup>American Association of Manufacturers, *Proceedings* (esp. 1905-1914).

<sup>8</sup>W. Fite, *Individualism* (1911).



and tutelage of government. It gave much attention to the economic arguments of the laissez-faire theorists, that the policy of non-interference rests upon sound economic principles. Natural liberty, it held, results in the largest production of wealth, and unrestricted competition stimulates economic prosperity. In addition, the individualists argued that the policy of excessive state regulation was condemned by experience, that the state was a clumsy and incompetent organization, and that most things were more efficiently done by private initiative than by governmental action.\*

## 2. THEORIES OF GOVERNMENTAL REGULATION

While the theory of individualism was supported by the more conservative thinkers and by many leaders in the industrial world, the doctrine of state regulation made rapid progress. Many practical defenders of conservatism admitted the necessity of modifying the earlier doctrines of laissez-faire. They recognized that the growth of combinations, both in the form of corporations and in that of labor unions, had changed the old system of free contract, and that the highly organized interrelations of modern life required a larger degree of public regulation than was needed in the simpler conditions of the earlier period. The growth of cities and the social conditions that resulted from the factory system led to far-reaching changes in the scope of governmental powers. Many who opposed extreme socialistic doctrines were willing to permit a considerable degree of state action. Even the conservative business interests favored a program of tariff legislation and of subsidies to railways and to shipping. It was also admitted that the principle of free competition was not always desirable; public utilities were recognized as natural monopolies, and consolidation proceeded rapidly in various lines of business. To prevent the dangers of monopoly control, demand for governmental action was inevitable.

The movement for regulation of corporations took various forms. It was argued that the government should regulate corporations when they were affected with a public interest, and when their actions interfered with general welfare. This doctrine was applied especially to the railways, and was the basis for the Granger legislation and for later regulatory movements. There was also a strong movement opposed to consolidation which tried to secure

\*D. G. Ritchie, *Principles of State Interference* (3rd ed., 1902).

legislation that would prevent monopolies. State and federal legislation prohibiting combinations in restraint of trade resulted from this effort. Even those who believed that competition was beneficent demanded the prohibition of "unfair competition," and demanded legislation to prevent discriminations, rebates, and similar practices. Others, who favored large-scale industry as economically desirable, believed that state control should be exercised in the form of provisions for publicity, regulation of capitalization, and limitation of prices and profits. The movement for government ownership of public utilities made considerable progress.<sup>10</sup> In contrast to the extreme doctrines of individualism on the one hand and of socialism on the other,<sup>11</sup> American public opinion in general tended to accept large-scale business as inevitable, and even desirable, but expected the government to keep a watchful eye upon it and keep it from abusing its power.

In addition to the demand for negative regulation, which aimed to prevent the evils of monopoly control and to protect the individual from exploitation, there arose also the theory that the state should act positively to promote social welfare.<sup>12</sup> The older idea of the "police state" was replaced by the idea of the "general welfare state." It was the duty of the government to undertake a policy of constructive action and to endeavor to modify social conditions along lines considered desirable.<sup>13</sup> The rise of new problems required an expansion of state activity. This doctrine led to increased emphasis on public education, to the construction of public parks, playgrounds, and recreation facilities, and to labor legislation dealing with limitation of hours of labor, child-labor protection, regulation of conditions of employment, employers' liability, workingmen's compensation, and minimum wages.<sup>14</sup> In taxation, the income tax and the inheritance tax were based on broad demo-

<sup>10</sup> E. W. Bemis, *Municipal Monopolies* (1899); F. C. Howe, *The City the Hope of Democracy* (1905); C. Zueblin, *American Municipal Progress* (1902); F. Parsons, *The City for the People* (1901); A. Van Wagenen, *Government Ownership of Railways* (1910); C. S. Vrooman, *American Railway Problems* (1910); H. L. McBain, *American City Progress and the Law* (1918).

<sup>11</sup> C. W. Eliot, *The Conflict Between Industrialism and Collectivism in a Democracy* (1910).

<sup>12</sup> J. W. Jenks, *Governmental Action for Social Welfare* (1910); C. R. Henderson, *The Social Spirit in America* (1901); F. E. Haynes, *Social Politics in the United States* (1924); W. W. Willoughby, *Social Justice* (1900).

<sup>13</sup> H. Croly, *The Promise of American Life* (1909), *Progressive Democracy* (1914); W. Lippmann, *A Preface to Politics* (1914), *Drift and Mastery* (1914); W. Wilson, *The New Freedom* (1913).

<sup>14</sup> See the *American Labor Legislation Review*.

cratic theories of public welfare.<sup>15</sup> Both state and federal governments embarked upon elaborate projects of conservation, partly to avoid the exhaustion of our natural resources, and partly to prevent them from falling into the hands of special interests.<sup>16</sup> The prohibition movement was another example of the willingness to subordinate the individual to the general interests of the community.<sup>17</sup>

The movement toward social legislation was furthered by the interest of religious associations in social reform,<sup>18</sup> and by the efforts of labor unions to improve the conditions of the working class. The churches and the unions opposed the extreme theories of socialism but were influenced by its teachings. A broad social point of view in the church replaced the earlier interest in theological controversies, and its organized strength was placed behind many reforms that called for state action. The ideal of personal liberty was replaced by that of social welfare, and the police power of the state was called upon to regulate many phases of public morality. The Catholic and Jewish churches, in particular, laid emphasis on social programs and took active part in the struggle for social reform.<sup>19</sup> The labor unions adopted an opportunistic policy, and used their influence in politics, both state and national, from time to time to secure legislation that they considered desirable.

Economists, political scientists, and sociologists began to abandon or modify the earlier individualistic doctrines. Economic theory broke away from the earlier teachings of W. G. Sumner and denounced the doctrine of laissez-faire as "unsafe in politics and unsound in morals." The state was no longer viewed as a necessary evil, but as "an agency whose positive assistance is one of the in-

<sup>15</sup> M. West, *The Inheritance Tax* (1908); E. R. A. Seligman, *Essays on Taxation* (8th ed., 1913), *The Income Tax* (1914).

<sup>16</sup> C. H. Van Hise, *Conservation of Natural Resources* (1918); Conference of Governors, *Proceedings* (1908).

<sup>17</sup> R. Calkins, *Substitutes for the Saloon* (1901).

<sup>18</sup> G. Taylor, *Religion in Social Action* (1913); W. Gladden, *Applied Christianity* (1887), *Social Facts and Forces* (1897), *The Church and the Modern Life* (1908); W. Rauschenbusch, *Christianity and the Social Crisis* (1907); J. W. Buckham, *Progressive Religious Thought in America* (1919); S. Matthews, *Social Teaching of Jesus* (1897); C. S. McFarland, *The Christian Ministry and the Social Order* (1909).

<sup>19</sup> J. A. Ryan, *A Living Wage* (1906); J. Husslein, *The Church and Social Problems* (1901); M. Snell, "The Catholic Social Reform Movement in America," in *American Journal of Sociology*, V, 16-50 (1900); D. Philipson, *The Reform Movement in Judaism* (1907).

dispensable conditions of progress.”<sup>20</sup> Political scientists held that the proper functions of the state should be determined by their results rather than by *a priori* doctrines, and that the state was a proper instrument to promote social and economic progress.<sup>21</sup> Increased attention was given to actual observation, to statistical surveys, to historical and comparative studies, and to an investigation of the psychological bases of political activities. All these tendencies led to the conclusion that government, intelligently directed and controlled, was a valuable agent in social progress. Sociologists abandoned the individualism of Spencer, and laid emphasis upon coöperation rather than competition, and upon the possibilities of social improvement through rational collective action.<sup>22</sup> “Liberty was a formula to which men adhered, but its implication was by no means clear. It tended more and more to pass from a purely negative idea that less government meant more liberty, to a positive and constructive form—to a doctrine of individual and social advantage gained through the government or through organization. Fear of strong government, and unbounded belief in unrestrained competition, both declined; and in their place came a recognition of the need of well organized and equipped government, with broad powers to regulate unfair competition and to promote social efficiency and general welfare.”<sup>23</sup>

The expanding functions of government gave rise to a new theory of state activities, that of the “police power” of the state. To prevent the abuse of individual liberty the state must set limits and guards, and it must itself act to promote general welfare. T. D. Woolsey, who believed that the state was the means through which the highest ends of man and society could be achieved, discussed the nature and sphere of the police power.<sup>24</sup> He disliked the term “police,” however, as having unpleasant associations, and suggested instead “public economy” power. J. W. Burgess also dis-

<sup>20</sup> American Economic Association, *Publications*, I (1886); H. C. Adams, *Relation of the State to Industrial Activity* (1887); J. M. Clark, *Social Control of Business* (1926).

<sup>21</sup> W. W. Willoughby, *Social Justice* (1900); J. W. Garner, *Introduction to Political Science* (1910), Ch. X; C. E. Merriam, *New Aspects of Politics* (1925); A. F. Bentley, *The Process of Government* (1908).

<sup>22</sup> L. F. Ward, *Psychic Factors in Civilization* (1893); *Applied Sociology* (1906); E. A. Ross, *Social Control* (1901); A. W. Small, “Fifty Years of Sociology in the United States,” in *American Journal of Sociology*, XXI, 721 (1916); H. E. Barnes, *The History and Prospects of the Social Sciences* (1925), *Sociology and Political Theory* (1924).

<sup>23</sup> C. E. Merriam, *American Political Ideas* (1920), p. 368.

<sup>24</sup> *Political Science* (1878), I, 235-240.

cussed the police power as a necessary corollary of the sphere of civil liberty. Through it the state acted to prevent encroachment upon the rights of its individuals.<sup>25</sup> F. J. Goodnow urged the necessity of bringing juristic doctrines into correspondence with changing conditions, and favored an extension of the police power when the results promised more good than harm.<sup>26</sup> The theory of police power was worked out in systematic form by E. Freund.<sup>27</sup> He held that the purpose of the police power is "to promote the public welfare," and that public welfare should be determined by social and economic conditions. The state, therefore, should not only protect public safety, order, and morals, but interfere in a broad field of economic interests for the protection of the individual and the promotion of the common good. The limits of the police power of the government and the question of when the police power is exercised by "due process of law" has received much attention from the courts.<sup>28</sup>

### 3. THEORIES OF SOCIALISM

Before 1850 socialism in the United States was a humanitarian rather than an economic or political movement. It was not based upon the new industrial conditions, but upon the earlier theory of natural law and upon the belief in the perfectability of society through rational effort. Accordingly, ideal plans,<sup>29</sup> similar to the Utopia of Sir Thomas More, were drawn up; and efforts were made to test these plans by experiment in small communities, with the hope of securing wider acceptance for their principles. As a result of the activities of Robert Owen in England, and of Charles Fourier and Étienne Cabet in France, numerous communistic experiments were tried in America, where there was an abundance of cheap land, removed from the evil influences of industrial life, and where political and religious conditions attracted those who dreamed of a new social order.<sup>30</sup> Similar communities were estab-

<sup>25</sup> *Political Science and Comparative Constitutional Law* (1890), I, 216.

<sup>26</sup> *Social Reform and the Constitution* (1911).

<sup>27</sup> *Police Power* (1904). See also W. W. Cook, "What Is Police Power?" in *Columbia Law Review*, VII, 322 (1907); L. P. McGehee, *Due Process of Law Under the Federal Constitution* (1906).

<sup>28</sup> C. K. Burdick, *The Law of the American Constitution* (1922), Ch. XXXII.

<sup>29</sup> L. Mumford, *The Story of Utopias* (1922); J. O. Hertzler, *History of Utopian Thought* (1923).

<sup>30</sup> L. Bushee, "Communistic Societies in the United States," in *Political Science Quarterly*, XX, 625-664 (Dec., 1905).

lished by religious groups, composed mainly of German immigrants. Of these the Rappist Community and the Amana Society<sup>31</sup> were most important. In these communities the socialistic elements were incidental to their sectarian aims, and were adopted after their arrival in America to meet immediate needs. They represented, however, the widespread belief of the period in the possibility of setting up an ideal form of society.

Between 1825 and 1830 a group of communities was founded in the United States through the efforts of Robert Owen or as a result of his inspiration. Owen believed that poverty was caused by the competition of human labor with machinery, and that the remedy lay in coöperative, industrial communities, based on manual labor. He had presented his remedy to the House of Commons, where it was rejected as too radical, but he was determined to try his experiment on his own resources, and purchased the town of Harmony in Indiana from the Rappist Community in 1824 for that purpose. On arriving in the United States he outlined his plans before interested audiences in many cities, and delivered addresses in the House of Representatives that were attended by the President, the Justices of the Supreme Court, and many Senators and Representatives. He invited the "industrious and well-disposed of all nations" to join his community, and in 1825 established a constitution for the society of New Harmony. The management of affairs was left to a committee and Owen returned to England. On his return in 1826, he found reorganization necessary, and drafted a new constitution for the "New Harmony Community of Equality," providing for freedom of speech, equality of rights and duties, common ownership of property, coöperation to the fullest extent, and rigid economy." Considerable trouble was caused by his efforts to prescribe uniformity of dress, and by his "Declaration of Mental Independence," in which he attacked private property, irrational systems of religion, and the marriage tie. His attitude toward marriage was denounced in all parts of the country, and in a short time the community was hopelessly divided and its prosperity destroyed.<sup>32</sup>

After the failure of New Harmony, Owen several times visited the United States in the interest of socialism; and his sons, who became American citizens, were leaders in the crusade for humanitarian reforms, especially public education, women's rights, and

<sup>31</sup> B. F. Shambaugh, *Amana: The Community of True Inspiration* (1908).

<sup>32</sup> G. B. Lockwood, *The New Harmony Movement* (1905).



the abolition of slavery. The influence of Owen was also felt in the community "Nashoba" founded in Tennessee in 1825 by Frances Wright. She desired to abolish slavery and to apply Owen's system of education and of coöperative labor to the negroes. On the failure of her community in 1829, she took her negroes to Haiti, but was later associated with Owen's eldest son in reform propaganda, and took part in the formation of a Workingmen's Party in New York in 1830. The Owenite movement was linked up with various labor and social-reform movements in the United States. It formed a nucleus around which the forces of unrest, and the demands for abolition of slavery, women's rights, and temperance could gather. Conditions, however, were not yet ripe for real social progress; the movement was discredited by Owen's attack on religion and on marriage, and the various agitations were gradually drawn into the anti-slavery movement. Little permanent influence was exerted by Owen's utopian socialism.

The second group of utopian communities was established in the period 1840 to 1850 under the inspiration of French thought. The social principles of Charles Fourier were introduced into America by Albert Brisbane,<sup>33</sup> who was impressed by the idea of "dignifying and rendering attractive the manual labor of mankind, labor hitherto regarded as a divine punishment inflicted on man." His work, published shortly after the first great economic crisis in the United States, came at a time when many persons were interested in social problems. Among these was Horace Greeley,<sup>34</sup> who opened the columns of the New York *Tribune* to a discussion of the new doctrines. Brisbane edited a daily column on the first page for the use of "advocates of association," in order to lay their principles before the public. Greeley took an active part in the attempt to establish "phalanxes," and Fourierism was widely discussed in many parts of the country.<sup>35</sup> Another supporter of the doctrines of Fourier was Parke Godwin,<sup>36</sup> associate editor of the

<sup>33</sup> See his *Social Destiny of Man* (1840). This was a reprint of the striking passages in Fourier's works, with comments by Brisbane. See also his *Association; or a Concise Exposition of the Practical Part of Fourier's Social Science* (1843).

<sup>34</sup> Parton, *Life of Horace Greeley* (1868), Ch. XIV; J. R. Commons, "Horace Greeley and the Working-Class Origins of the Republican Party," in *Political Science Quarterly*, XXIV, 468-488 (Sept., 1909); C. Southern, *Horace Greeley and Other Pioneers of American Socialism* (1915).

<sup>35</sup> See the debate carried on for six months, Nov., 1846, to May, 1847, between Greeley in the *Tribune* and H. J. Raymond in the *New York Courier and Enquirer*.

<sup>36</sup> *Life of Charles Fourier; Popular View of the Doctrines of Charles Fourier* (1843); *Democracy, Constructive and Pacific* (1844).

*Evening Post*. He appealed especially to the working classes, and anticipated the doctrine of the class struggle.

Fourierist societies were formed in many states, and efforts were made to organize on a national scale and to coöperate with similar organizations in Europe. Communities, based on the plans of Fourier's "phalanx," were declared to be the universal remedy for all social evils, and attempts were made in many parts of the country to try out the system. Most of these experiments were undertaken on a small scale, with insufficient preparation and capital, and few lasted more than a year. The most famous was Brook Farm,<sup>37</sup> which grew out of the philosophical and humanitarian movement in New England. A group, known as the "Transcendental Club,"<sup>38</sup> interested in the social, political, and religious reforms of the period, decided to establish a community in which their theories could be applied. The object of the association was "to more effectually promote the great purposes of human culture; to establish the external relations of life on a basis of wisdom and purity; to apply the principles of justice and love to our social organization in accordance with the laws of Divine Providence; to substitute a system of brotherly coöperation for one of selfish competition; to secure for our children, and to those who may be entrusted to our care, the benefits of the highest physical, intellectual, and moral education which, in the present state of human knowledge, the resources at our command will permit; to institute an attractive, efficient, and productive system of industry; . . . to diminish the desire to excessive accumulation by making the acquisition of individual property subservient to upright and disinterested uses. . . ."

After the national convention of the Fourierist societies was held in 1844, Brook Farm affiliated itself with that movement and became the "Brook Farm Phalanx." It assumed the leadership of the Fourierist propaganda and published its weekly magazine, the *Harbinger*. The burning of the large common building, or "phalanstery," proved a fatal blow to the finances of the association, and in 1846 the community was dissolved. This group exercised an important influence on the intellectual life of the country, and

<sup>37</sup> J. T. Codman, *Brook Farm: Historic and Personal Memoirs* (1894); L. Swift, *Brook Farm: Its Members, Scholars, and Visitors* (1906).

<sup>38</sup> H. C. Goddard, *Studies in New England Transcendentalism* (1908); O. B. Frothingham, *Transcendentalism in New England* (1876); V. L. Parrington, *The Romantic Revolution in America* (1927), Bk. III, Pt. III.

many men who became prominent in literary and political pursuits were educated in its school.

Another communist group in America owed its inspiration to Étienne Cabet, whose *Voyage en Icarie* (1839), a utopia similar to that of More, appealed especially to the working classes. When his enthusiastic followers urged him to found a community, he issued a proclamation to French workingmen, inviting them to go with him to "Icaria," which he proposed to found "somewhere in America." This community, finally located in 1849 at Nauvoo, Illinois, had a longer life than the other experiments; but financial difficulties, factional divisions, and removals to new locations led to the final dissolution of the society in 1895.<sup>39</sup>

Utopian socialism had little influence on the later development of socialist doctrines. It was intellectual and moral, rather than economic and political, and it appealed to the literary and professional middle classes, rather than to the laborers. It was more interested in setting up ideal communities, within which a perfect life could be developed, than in reforming the social and political life of the country in general. It represented the beginnings of the demand for reform; but the industrial situation in America was not yet sufficiently developed to make possible a scientific analysis, such as Marx made in England, and from which the theory of state socialism was evolved. Utopian socialism was not a political movement; and the fact that the utopian experiments were generally regarded in America as examples of socialism in practice made it difficult for the American people to regard socialism as a political issue. It was associated in the popular mind with communism and with sex-communism in particular.

Marxian socialist theories were brought to America by German immigrants, composed mainly of workingmen and of political refugees driven out by the revolutions of 1830 and 1848. Organizations of these groups were formed, mainly through the efforts of William Weitling,<sup>40</sup> and the movement soon spread beyond the ranks of German labor. A general workingmen's convention was held at Philadelphia in 1850, whose political platform was borrowed mainly from the Free Soil party and whose motto was "Equal

<sup>39</sup> A. Shaw, *Icaria: A Chapter in the History of Communism* (1886); Teakle, "History and Constitution of the Icarian Community," in *Iowa Journal of History and Politics*, XV, 214-286 (Apr., 1917).

<sup>40</sup> *The World as It Is, and Should Be* (1838); *Guarantees of Harmony and Freedom* (1840). In common with other utopians he based his plea for a new social organization on moral grounds.

Rights and Duties." Socialist clubs were formed in various cities, and were active in the movement for political reform, labor organization, public education, and the abolition of slavery. After the Civil War, socialist doctrines were spread, partly through the growth of the American labor movement, partly through the efforts of socialists of foreign birth who were associated with the International of Karl Marx. For a long time the socialists in the United States were a transplanted German party. The American mind did not readily grasp the abstract theoretical points which the Germans were fond of discussing, and the Germans had little interest in the special political problems, such as the Greenback, Single Tax, and Populist issues, which were of chief interest to the radical elements in the United States.

Various attempts were made to consolidate the labor forces of the country, to form an independent labor party, and to affiliate American labor with the European International. The convention of the National Labor Union in 1867, by a close vote, refused to establish official relations with the International, but expressed sympathy with the "efforts of the working-classes in Europe to acquire political power, to improve their social conditions, and to emancipate themselves from the bondage under which they were and still are." German labor organizations in America maintained relations with the Marxian organization in Europe, and considered themselves as "sections" of the International. In 1869, the National Labor Union, after a formal invitation, sent a delegate to the International; and in 1870 the New York section, which was the most powerful and active socialist group in America, was made the Central Committee for the International in the United States. In 1872 a national convention of the International was held in New York at which twenty-two sections were represented. An impetus was given to the socialist movement by the transfer of the seat of the General Council of the European International from London to New York to avoid the influence of the European anarchists led by Bakunin. National conventions of the International were held in Philadelphia in 1874 and 1876, but by that time the International movement had failed and its organization was only nominal. The delegates decided to formally dissolve the association, urging that its principles be guarded until the time was favorable to the formation of a new organization, and closing their address with the appeal: "Proletarians of all countries, unite."

In 1874 several New York sections which had withdrawn from

the International, in conjunction with radical labor organizations in other cities, formed the Social Democratic Working-Men's Party of North America. The leaders of this movement were German socialists who had come under the influence of Lassalle, and who attached greater importance to political methods than did the followers of Marx. The new party gained in strength as the International declined, made successful efforts to consolidate various organizations of labor with socialist leanings, and in 1877 changed its name to the Socialist Labor Party of North America. For twenty years it remained the most important socialist organization in the country, and bent its efforts to "Americanizing" the movement, and to appealing to American labor through the avenues of the trade-unions and through political activity. All attempts to commit the labor organizations, represented by the Knights of Labor and later by the American Federation of Labor, to the socialist program failed; and as the socialists realized the futility of their efforts, an open enmity grew up between the socialist and labor organizations. Union leaders, eager to unite all workers, regardless of party or creed, opposed the efforts to combine socialism with labor organization. Matters reached a climax when, in 1896, under the leadership of Daniel De Leon, the Socialist Labor party started a rival organization to the American Federation of Labor, called the Socialist Trade and Labor Alliance. This body, in its bitter opposition to the trade-union movement, made it difficult for a responsible union member to become a socialist, and developed a bitter hostility to socialism among labor leaders.

In the field of political activity the socialists were little more successful. A strong wing of the party, composed largely of the foreign element, opposed such action until the party could make an impressive showing at the polls. The industrial depression after 1873, and the labor troubles that accompanied it, enabled the socialists to spread their doctrines among the laboring men; and the party increased its membership and established a number of newspapers, in English and in German, to spread their propaganda. Chief among these was the *New-Yorker Volkszeitung*. With the return of prosperity after 1879 the membership of the party declined, and in 1880 it decided to join with the Greenback party in the presidential campaign. For a decade the socialists took no organized part in politics in a national way. The party was further weakened by a split between the moderate elements and a radical faction that leaned toward anarchism. John Most, who came to America from



Germany in 1882, was the leader of this faction. He organized the revolutionary groups, spread anarchistic doctrines through his paper, *Die Freiheit*, and in a convention in 1883 secured the adoption of the "Pittsburgh Proclamation," a mixture of the theories of Marx, Proudhon, and the French encyclopedists. All attempts to reconcile the moderate and radical socialists failed, and the younger revolutionary organization made the more rapid progress.

Chicago was the center of the anarchistic socialists; and labor troubles, which broke out in that city in 1886, led to riots that finally resulted in a reign of terror. Revolutionary leaders had advocated violence and had urged workingmen to "arm and appear in full force." After the "Haymarket Massacre," the leaders of the movement were tried for murder,<sup>41</sup> the prosecution maintaining that they had "by speech and print advised large classes of the people to commit murder." The conviction and execution of a number of the accused destroyed the influence of the anarchistic element in the labor and socialist movement in the United States and led to a revival of interest in more moderate propaganda. Difference of opinion persisted, however, on the issue of whether socialists should coöperate with the labor parties, should form a separate party, or should abstain entirely from politics. Toward the end of the century a new and more radical socialist movement, led by E. V. Debs,<sup>42</sup> developed outside the ranks of the Socialist Labor party. One faction, taking the name of the Social Democracy of America, favored utopian schemes and the establishment of communist colonies.<sup>43</sup> Another, led by Victor Berger, favored a more practical program and took the name of the Social Democratic Party of America. This group finally amalgamated with the Rochester wing of the Socialist Labor party, and at a general convention in Indianapolis in 1901, to which all socialist organizations were invited, a new platform and constitution were adopted and the name Socialist party was assumed. This remained a vigorous and growing party, and by 1912 cast almost a million votes. Debs was its recognized leader during this period. The attitude of the party toward the Great War, and dissension in its ranks between its intelligent and moderate leaders and a group of doctrinaire and revolutionary agitators, caused a falling off in its voting strength after 1914. At present there is no vital socialist movement in the

<sup>41</sup> F. T. Hill, *Decisive Battles of the Law* (1907), pp. 240-268.

<sup>42</sup> D. Karsner, *Debs: His Authorized Life and Letters* (1919).

<sup>43</sup> Led by J. A. Wayland, editor of *The Coming Nation*, afterward *The Appeal to Reason*.



United States, as compared with the strength of the party in European countries.

The theory of socialism was expounded in America by a long list of writers,<sup>44</sup> most of whom adopted with little modification the doctrines of Marx, and believed in the ultimate breakdown of the capitalist system and its replacement by a plan of collective ownership of the means of production. The most widely read was Edward Bellamy, whose utopian *Looking Backward* (1887)<sup>45</sup> provided for compulsory industrial activity and a government based upon the economic organization of society. The writings of John Spargo<sup>46</sup> and Morris Hillquit<sup>47</sup> were also influential. They favored a moderate, evolutionary program, opposing the doctrines of complete equality and the abolition of private property, and of interference with religion or the family. They attacked the extreme doctrines of anarchy on the one hand and of the self-government of industrial groups on the other, and believed that the state, reorganized so as to avoid class control, should be the instrument to promote general welfare and to protect individual freedom. Edmond Kelly's books<sup>48</sup> attracted considerable attention. He defended socialism on biological grounds, arguing that it was the purpose of society to prevent the cruelty and injustice of natural forces, and that a reorganized political and economic system should be set up to restrain the evils of competition and to secure social justice. Among the laboring classes the speeches and writings of Eugene V. Debs<sup>49</sup> were widely read. He represented the more radical and

<sup>44</sup> A. M. Simons, *Social Forces in American History* (1911); V. Berger, *Broadsides* (1913); R. Hunter, *Poverty* (1904), *Socialists at Work* (1908), *Violence and the Labor Movement* (1914); W. E. Walling, *Progressivism and After* (1914), *The Larger Aspects of Socialism* (1913), *Socialism as It Is* (1912); C. E. Russell, *Lawless Wealth* (1908), *Business* (1911); S. Nearing, *Social Adjustment* (1911), *The New Education* (1915); U. Sinclair, *The Industrial Republic* (1907); V. D. Seudder, *Socialism and Character* (1912); W. E. Walling and H. W. Laidler, *State Socialism, Pro and Con* (1917); H. W. Laidler, *Socialism in Thought and Action* (1920), *History of Socialist Thought* (1927); M. Hillquit, *Socialism in Theory and Practice* (1909); J. W. Hughan, *American Socialism of the Present Day* (1911).

<sup>45</sup> See also his *Equality* (1890). Another utopian novel that attracted attention was W. D. Howells's *Traveler from Altruria* (1894).

<sup>46</sup> *Socialism* (1906); *Common Sense of Socialism* (1908); *The Spiritual Significance of Modern Socialism* (1908); *The Substance of Socialism* (1909); *Karl Marx* (1910); *Sidelights on Contemporary Socialism* (1911); *Applied Socialism* (1912); *Socialism and Motherhood* (1914).

<sup>47</sup> *Socialism in Theory and Practice* (1909); *Socialism Summed Up* (1913); *History of Socialism in the United States* (1910).

<sup>48</sup> *Government or Human Evolution* (1901); *Twentieth Century Socialism* (1910).

<sup>49</sup> *The American Movement* (1905); *Life, Work, and Speeches* (1908).

revolutionary wing of the movement and urged political agitation and propaganda.<sup>50</sup>

Socialists in America as in Europe were not agreed upon their constructive program. Some favored political action through an organized party; some preferred violent revolution; some preferred direct industrial action. In general, however, their programs called for an expansion of governmental functions. They usually demanded government ownership of natural resources, railways, public utilities, and large-scale industries. They also favored extensive social legislation to protect the interests of the laboring classes. While their theories as a whole were not widely adopted, and their political success was limited to scattered local communities, their ideas deeply influenced the course of political thought and helped to break down the earlier individualistic point of view. Many of their specific reforms were put into practice, and many ideas that were considered socialistic in 1870 were generally accepted, even in conservative circles, by 1910. The principles of organization and of associated effort made rapid progress and collective action took the place of individual action in large areas of human conduct.

#### 4. THEORIES OF ANARCHISM AND SYNDICALISM

While the movement for labor organization in America followed in the main the English style, and the socialist movement followed German models, the anarchist doctrines drew largely on Russian ideals, and the syndicalists were influenced by French and Italian doctrines. The anarchist theory that the state is an evil and performs no useful function, and should therefore be destroyed, never secured wide acceptance in America. Traces of this point of view appeared, however, from time to time. In the earlier period of American history, such ideas were the result of the extreme individualism of the times and often had a religious background. The Antinomians of Puritan Massachusetts were a religious sect who held that they were above the law, because the Christian dispensation had freed them from the law. The Quakers were anti-militarists, and non-resistants, and opposed active participation in government. The "Come-Outers" of the abolitionist period were unwilling

<sup>50</sup> Writers of fiction from the socialist point of view included J. London, *The Iron Heel* (1908); U. Sinclair, *The Jungle* (1906), *King Coal* (1917), *Jimmie Higgins* (1919). In defense of the existing order, see J. Hay, *The Breadwinners* (1883); T. Dixon, *The One Woman* (1903); D. M. Parry, *The Scarlet Empire* (1906).

to take part in a government which was anti-Christian and which recognized human slavery. The writings of W. L. Garrison and H. Thoreau contained many traces of individualistic anarchism. The ablest statements of this phase of the doctrine were made by Josiah Warren<sup>51</sup> and by S. P. Andrews.<sup>52</sup> Warren held that "there should be no such thing as the body politic . . . no member of any body but that of the human family. Every man should be his own government, his own law, his own church, a system within himself."

After the Civil War anarchism was based upon economic rather than upon religious or political grounds, and followed the doctrines developed in Europe by Proudhon and Stirner, and later those of Bakunin and the Black International. Some followed the individualistic tradition and held that property should be vested in each person, whose reward would be determined by the value of his labor to others; another group adopted the communist doctrine that property should be owned by voluntary associations, with the necessities of life guaranteed to all. Both agreed in the abolition of the state. As to the means of attaining anarchy, the philosophical group favored the peaceful process of evolution; the revolutionary group favored violent and forceful methods. While there was widespread disregard for law in the United States, there was little tendency to adopt a systematic theory of anarchism.

The most notable of the individualistic and philosophical anarchists was Benjamin Tucker.<sup>53</sup> He regarded the state as the oppressor of the individual and as the source of most of the evils of society. He would replace the state by voluntary associations, which the individual might join if he wished, and from which he might secede. If he joined he was under obligation to pay contributions and to perform jury service. Political organization would thus rest upon the voluntary formation by individuals of a number of social contracts. The defense of persons and property would be left to voluntary defensive associations. While Tucker did not propose to abolish private property, he believed that the workers did not receive a fair share of their products, and he wished to abolish interest, rent, and profits. To accomplish this he proposed free banking with unlimited power to issue money and credit, and the

<sup>51</sup> *Equitable Commerce* (1852).

<sup>52</sup> *The Science of Society, or the True Constitution of Government in the Sovereignty of the Individual as the Final Development of Protestantism, Democracy, and Socialism* (1851).

<sup>53</sup> See his *Instead of a Book, by a Man Too Busy to Write One* (1893), *Individual Liberty* (1926), and his newspaper, *Liberty*.

abolition of all land titles which did not "rest upon personal occupancy and cultivation." Tucker denounced the revolutionary anarchists as robbers and murderers who used anarchism as a cloak for personal greed and crime.

Individualist anarchism made little appeal to the working classes because it proposed few alterations in private property. The workers were more opposed to the private ownership of capital than they were to the state; hence communist anarchism, following the doctrines of Bakunin, rather than those of Proudhon, Stirner, and Kropotkin, attracted a much larger following.<sup>54</sup> Among the leaders of the revolutionary group were John Most<sup>55</sup> and, later, Emma Goldman.<sup>56</sup> J. Most opposed all compromise with capitalism, denounced labor unions and political action, and favored revolutionary violence. The Pittsburgh Proclamation, issued in 1883, stated as its leading principles the control of public affairs by a federation of associations resting on the basis of free contracts of individuals, and the destruction of the capitalistic system of class rule by revolutionary action. Emma Goldman opposed religion, private property, and government, and attacked the state on the ground that it was unnecessary and injurious.

The blending of anarchism, trade-unionism, and socialism resulted in a form of syndicalism in America, similar to French syndicalism of a later period, and closely allied with the activities of the Industrial Workers of the World in recent years. August Spies and A. R. Parsons were active in the early period of the movement (1883-1886). Syndicalism adopted the economic doctrines of the socialists, the political theory of opposition to the state of the anarchists, and the general methods of the trade-unions in their belief in direct, non-political action. It aimed at a society composed of a federation of self-governing industries, and favored a general strike as the method by which the industrial millennium should be ushered in. Until the time was ripe for a general revolution, it favored sabotage, by which the worker deliberately reduced his output, often with destruction of materials and machinery.<sup>57</sup> In gen-

<sup>54</sup> H. L. Osgood, "Scientific Anarchism," in *Political Science Quarterly*, IV, No. 1 (Feb., 1889); A. R. Parsons, *Anarchism, Its Philosophy and Scientific Basis* (1887); V. Yarros, *Anarchism, Its Aims and Methods* (1900); R. Hunter, *Violence and the Labor Movement* (1914).

<sup>55</sup> See his *Science of Revolutionary War*, parts of which were published in the *New England Reporter*, XII, 894.

<sup>56</sup> *Anarchism and Other Essays* (1910). See also A. Berkman, *Prison Memoirs of an Anarchist* (1912); D. I. Sturber, *The Anarchist Constitution* (1903); C. Darrow, *Resist Not Evil* (1903).

<sup>57</sup> W. E. Trautmann, *Direct Action and Sabotage* (1913).

eral, the syndicalists favored economic rather than political action, and were more interested in the destruction of the present system than in comprehensive, constructive programs of reorganization. In their economic organization, they favored the organization of all workers in a given industry into industrial unions, rather than the organization of separate crafts in the labor unions.<sup>58</sup> W. H. Haywood<sup>59</sup> was active in spreading the propaganda of this group. He was doubtful of the possibility of reform through democratic, political action, bitterly opposed to the doctrines of the state socialists, and suspicious of the motives and methods of the trade-unions. He believed that revolutionary, mass action by the whole body of organized workers was the only way in which a new order of economic and social justice could be established.

The doctrines of the Industrial Workers of the World, though similar to those of French syndicalism, were mainly an indigenous product of American labor conditions. The way was prepared for them by organizations in the western part of the country, the Western Federation of Miners being the chief forerunner. Under the leadership of Haywood and others, direct action and sabotage were practised before the terms, borrowed from the syndicalists, came into use. The I.W.W. was a union of unskilled workers, composed mainly of migratory labor employed in agriculture and in the production of raw materials. This new phase of the labor movement became national in its influence by coöperation with groups that were hostile to the conservative policy of the American Federation of Labor. The failure of many strikes and the use of the injunction by the courts led many unionists to advocate more aggressive methods, and to favor the system of organization by industries rather than by crafts. As "revolutionary industrial unionists" they advocated violent methods of direct economic action.

The I.W.W. was organized in 1905, as the result of a "secret conference" called for the purpose of discussing "ways and means of uniting the working-people of America on correct revolutionary principles." One of the chief leaders was Daniel De Leon, the former leader of the Socialist Labor party.<sup>60</sup> This conference issued

<sup>58</sup> J. G. Brooks, *American Syndicalism: The I.W.W.* (1913); J. Spargo, *Syndicalism, Industrial Unionism, and Socialism* (1913); R. Hunter, *Violence and the Labor Movement* (1914); A. D. Lewis, *Syndicalism and the General Strike* (1914); L. Levine, *The Development of Syndicalism in America* (1913); J. A. Estey, *Revolutionary Syndicalism* (1913).

<sup>59</sup> *The General Strike* (1911).

<sup>60</sup> See Daniel De Leon, *The Man and His Work*, a symposium published by the Socialist Labor party in 1920; also De Leon's *As to Politics* (1907).



a manifesto criticizing the trade-union movement as making solidarity of laborers impossible and diminishing class consciousness, and urged the formation of "one great industrial union embracing all industries, providing for craft autonomy locally, industrial autonomy internationally, and working class unity generally." There was little unity in the heterogeneous groups represented in this movement, and numerous splits occurred, especially between the more revolutionary unskilled laborers who favored direct and violent action, and the more conservative elements who favored political action. The revolutionary group secured control of the organization, struck out the objectionable political clause from its program, and determined upon direct and forceful economic action. This group engaged in belligerent free-speech controversies with municipal authorities, organized numerous strikes of which that in Lawrence, Massachusetts, in 1912 was the most serious, and took every opportunity to spread its propaganda of workers' solidarity, passive resistance, direct action, and sabotage.

The International Workers of the World frankly rejected current ethics as a bourgeois device to control the proletariat, denounced the church and the flag as intended to exploit labor, and attacked jingo patriotism as a device to extend capitalist markets. It held that no genuine democracy was possible until the workers controlled the management of their own industries. The industrial union was to be the "administrative unit in the future industrial democracy." During the World War the methods of the International Workers of the World exposed them to charges of disloyalty and treason. For them there was only one war, the class war that had no national boundaries. Industrial discontent was general, but the lack of patriotism was more common among industrial workers than elsewhere, and the International Workers of the World was distinctly disloyal. Political disability, casual employment, militant action by employers' associations, and unfavorable legislation and court decisions led many discontented laborers to favor violent methods toward employers and toward political authority.<sup>61</sup> While there has been less philosophizing on the theory of syndicalism in

<sup>61</sup>P. F. Brissenden: *The I.W.W.: A Study in American Syndicalism* (1919); J. G. Brooks, *American Syndicalism: The I.W.W.* (1913); C. Parker, *The Casual Laborer and Other Essays* (1920), "The I.W.W.," in *Atlantic Monthly*, CXX, 651-662 (Nov., 1917); R. S. Baker, "The Revolutionary Strike," in *American Magazine*, LXXIV, 19-30 (May, 1912); M. D. Savage, *Industrial Unionism in America* (1922); *Proceedings of the I.W.W. Conventions* (1905-1916).



America than in France and Italy, or in the somewhat similar doctrines of the Gild Socialists in England, the existence of economic discontent has led to a general reëxamination of the basis of political organization and of the recognition of economic groups in the governmental system.

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## CHAPTER XVIII

### POLITICAL THEORY OF MUNICIPAL GOVERNMENT

#### 1. GROWTH OF AMERICAN CITIES

American cities were the product of the nineteenth and twentieth centuries.<sup>1</sup> The writings of Hamilton, Madison, and Jay, the authors of *The Federalist*, as well as those of Washington, Franklin, and John Adams, gave practically no attention to the problems of cities and city government. At the beginning of our national life only five towns had more than 8,000 inhabitants; as late as 1820 only thirteen exceeded that size, and only five per cent of our population was urban. The early towns were not industrial centers but markets, where the products of the country were exchanged for the manufactures of England. Because of the lack of industrial development, city growth was slow. Between 1820 and 1840 city population increased more rapidly. The building of roads and canals stimulated commerce and industry, and the building of railroads accelerated the movement. Between 1840 and 1850 city growth was especially marked. The protective tariff shut out foreign imports and gave the industrial centers of the North control of the Southern and Western markets. The American clipper ships were carrying American commerce to all parts of the world. Westward expansion, quickened by railroads, reacted favorably on the urban centers of the East, and created new centers in the Middle West. The stream of immigrants increased greatly in volume and a large proportion of the new arrivals clustered in the cities.

The Civil War checked city growth somewhat, because of the decline in sea-borne commerce and the fall in the number of immigrants. On the other hand, it stimulated industry in the North and increased the industrial importance of the cities. At the close of the Civil War, conditions were ripe for unprecedented urban development. Railroad building on a gigantic scale was begun. Great tracts of Western land were opened for settlement. The country was committed to a policy of protection, and a high level of wages

<sup>1</sup> A. F. Weber, *Growth of Cities in the Nineteenth Century* (1899).

attracted a rapidly increasing foreign immigration. The country was in an optimistic mood, and industrial expansion proceeded on a large scale. Toward the end of the century, when cheap land was no longer available, the new type of immigrant from southern Europe found his greatest opportunities in the cities and a large-scale movement from country to city took place within the nation itself. At present, half the population of the United States lives in urban communities.

The growth of cities had a profound effect upon national life and character, and created difficult social, economic, and political problems. It has often been asserted that the growth of cities tends to lower national morality. The opportunity for crime is greater, necessary regulations demanded by a dense population increase the laws that may be broken, and unemployment of a considerable part of the population increases the temptation to disorder, violence, and dishonesty. The industrial revolution, by bringing the workers together in factories, gave rise to labor organizations and the labor movement; and it is in the cities that this revolution has run its course. The city is a fertile field for boss and machine politics. Its political mechanism has often been complicated beyond the understanding of the ordinary citizen, and his bewilderment is the professional politicians' opportunity. Hence the rural districts distrust the cities and attempt to prevent them from getting their proportionate share of representation or from securing a large degree of municipal home rule. As early as 1820 rural members of the constitutional convention in Massachusetts opposed the chartering of cities lest they might "ensnare and entrap" rural folk who went to them on business.<sup>2</sup> In the New York convention of 1821 it was predicted that the propertyless mob of New York City would control the whole state if they were given the vote.<sup>3</sup> In every state which contains large cities, a feud has existed between the rural sections and the urban centers.

Many early writers viewed with alarm the drift to the cities and urged that action be taken to prevent this movement lest the foundations of our national life be destroyed. Jefferson predicted that the growth of cities would create serious difficulties for democratic government. He said: "The mobs of great cities add just so much to the support of government as sores do to the strength of the

<sup>2</sup> *Journal of Debates and Proceedings of the Constitutional Convention* (ed. of 1853), p. 194.

<sup>3</sup> *Debates and Proceedings of the Convention* (1821), p. 115.

human body.”<sup>4</sup> De Tocqueville had a premonition that danger to the American republic would be caused by the “deluge of men rising unabatedly.” He thought New York and Philadelphia already too large, and said that “the lower orders which inhabit these cities constitute a rabble even more formidable than the populace of European towns.”<sup>5</sup> Max Nordau wrote that the conditions of city life were injurious to the physical and mental well-being of the human race.<sup>6</sup> In America, Walt Whitman,<sup>7</sup> Henry George,<sup>8</sup> and Edward Bellamy<sup>9</sup> believed that conditions of city life were not natural to man, and that his existence, under such conditions, could never be normal. It was believed that the large cities were nurseries of vice and crime, that they were fatal to efficient, democratic government, and that legislative action should aim at returning the population to the land. James Bryce stated that “the government of cities is the one conspicuous failure of the United States.”<sup>10</sup> “In great cities the forces that attack and pervert democratic government are exceptionally numerous; the defensive forces that protect it exceptionally ill placed for resistance.”<sup>11</sup>

It has often been asserted that the political thought of cities tends to mob-mindedness and political radicalism. The influence of Paris upon the political life of France is the example most cited. The instability of its population in contrast with the conservatism of the provinces, and the part it played in all the French revolutions seemed to prove the contention. In the American Revolution, the people of Boston and Philadelphia, though numbering less than two per cent of the inhabitants of the colonies, exercised a dominant influence in starting and in controlling that movement. People who own and cultivate land contribute a steadying influence, while the propertyless element of the cities is more susceptible to the arguments of the demagogue and the attractions of new systems. On the other hand, with the exception of socialistic and labor theories, most of the radical doctrines in the United States have had their origin in the Western agricultural sections. The clamor for cheap money after the Revolutionary and Civil wars, the Populist movement, and the Free Silver movement came from the rural

<sup>4</sup> *Writings* (Ford's ed.), III, 268-269.

<sup>5</sup> *Democracy in America*, I, 316-317.

<sup>6</sup> *Degeneration* (1885).

<sup>7</sup> *Prose Works* (1870), p. 211.

<sup>8</sup> *Social Problems* (1883).

<sup>9</sup> *Looking Backward* (1889).

<sup>10</sup> *The American Commonwealth* (1889), I, 608.

<sup>11</sup> *Ibid.*, p. 613.

sections. More conservative reforms, aiming at efficiency in government, such as civil service reform and the city manager system, have been the contributions of the cities. The metropolitan areas in the United States have been conservative rather than radical in their attitude toward political innovations.

The early American constitutions and laws were established by rural leaders to serve a rural people. They were based upon a political philosophy that made no provision for great urban aggregations, for a highly complex civilization, or for the control of powerful, impersonal corporations. In the beginning of our national life we were fearful of governmental interference. We accepted the individualistic and laissez-faire doctrine that the government should interfere with the individual as little as possible. It was believed that if each person were permitted to pursue his interests in his own way, the community interest, which is the aggregate of individual interests, would be best promoted. These principles coincided with the instincts of a pioneer people. But they elevated the rights of private property above the rights of the state, and left the community powerless before powerful combinations of private interests. At present these constitutions and laws no longer serve as well as they once did, because we have become a commercial and industrial urban people. When the city appeared, with machine industry, new forms of transportation, and huge aggregations of capital, a new attitude toward government was bound to rise. It became necessary to grant to the cities an increasing degree of local self-government, and to permit the government to extend its activities over a steadily widening field.<sup>12</sup>

The men who guided the destiny of the United States during the Middle Period, from 1812 to 1870, said and wrote little about cities. Their attention was directed to national problems—to westward expansion, slavery, and the nature of the Union. Not until the period of Reconstruction was over did the problem of city government force itself upon the attention of the American people. By that time the rapid growth of city population and expenditures, and the shocking conditions of misgovernment and corruption that were found to exist in the large cities, especially in New York, compelled attention to the new problem. The machine control of Boss Tweed and similar bosses appeared shortly after the Civil War. During the last half-century the people of the United States have become conscious of the difficulties of city government, of the

<sup>12</sup> L. S. Rowe, *Problems of City Government* (1908).

strain it imposes upon democracy, and of the effect of the political ideas and institutions of cities upon the nation as a whole. Organized efforts for municipal reform made their appearance, and political thought was directed to the problems of municipal organization and function. During the last quarter-century the literature on municipal questions has become extensive.

## 2. RELATION OF CITY TO STATE

An important phase of the theory of municipal government has to do with the legal position of the city in the American political system and the relation of the city to the state. A city is a municipal corporation; that is, it is a subordinate body-politic, established by a law in the form of a charter, and possessing delegated powers of local government. In the United States, with the exception of the District of Columbia and the territories, cities are created by state, not by national, authority. The doctrine that municipal corporations have inherent or natural rights of local self-government, not derived from charters or law, has been put forward by some writers and has occasionally been supported by the dicta of American courts.<sup>13</sup> This point of view argues that cities, like other corporations, have certain common-law rights and powers; and that cities were in existence and exercised certain powers before the states were established, hence their right of local self-government is an immemorial and ancient right which the state cannot take away.

The weight of authority takes the opposite view<sup>14</sup> that the city is the creature of the state, that it has only such powers as are specifically granted in its charter, and that, save as it is protected by constitutional guarantees, it has no immunity from state legislative interference. The city has no rights which are beyond the control of state constitutions and laws.<sup>15</sup> In 1903 the Supreme Court quoted<sup>16</sup> with approval the opinion of Judge Dillon: "Municipal corporations owe their origin to, and derive their powers from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may de-

<sup>13</sup> A. M. Eaton, *The Origin of Municipal Incorporation* (1902); "The Right of Local Self-Government," in *Harvard Law Review*, XIII, 441-454 (Feb., 1900).

<sup>14</sup> H. L. McBain, "The Doctrine of an Inherent Right of Local Self-Government," in *Columbia Law Review*, XVI, 190-299 (Mar., Apr., 1916).

<sup>15</sup> *Meriwether v. Garrett*, 102 U.S., 472 (1880). *Metropolitan Railroad v. District of Columbia*, 132 U.S. (1889).

<sup>16</sup> *Atkins v. Kansas*, 191 U.S., 207 (1903).



stroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations of the state, and the corporations could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature." In the early period of our history the courts were inclined to interpret liberally the specific powers granted to cities; since the middle of the nineteenth century the courts have inclined to apply to the cities the same strict rules of interpretation which govern the charter powers of ordinary corporations.<sup>17</sup>

In colonial times, borough charters were granted by the colonial governors, in the name of the English crown or of the colonial proprietor. This was in accordance with the common law and practice in England, where the right to issue charters was based on the royal prerogative. New York City received the first charter in 1686.<sup>18</sup> Between 1686 and 1746 twenty colonial boroughs were incorporated. After 1746 no new charters were granted, probably because of the growing hostility between the home government and the people of the colonies. These charters were usually granted on petition of the leading citizens of the community, and in some cases they were submitted to the inhabitants for acceptance or rejection. In New England no borough charters were issued, since the system of town government in that section gave a greater degree of local freedom than could be secured under a borough charter. A charter was not forced on any colonial community. Each charter was a separate grant, no two being exactly alike. The colonial boroughs were judicial rather than administrative organizations, partly because that was the English precedent, and partly because few of the modern municipal functions were then performed.

With the winning of independence in 1776, the power to grant charters was transferred from the governors to the state legislatures. Executive power was feared and the representative assembly became the dominant organ of government. In the Constitutional Convention of 1787, Madison said: "The executives of the states are in general little more than ciphers; the legislatures are omni-

<sup>17</sup> H. L. McBain, *American City Progress and the Law* (1918), pp. 34-36.

<sup>18</sup> *Colonial Laws of New York* (1897), I, 181. Several hamlets in Maine received charters in the seventeenth century, but these charters were not put into operation.

tent." In all the states the legislatures assumed without question the right to make and to amend city charters. Several of the new state constitutions specifically recognized this transfer of power. The constitution of New York (1777) provided that the charters of the colonial boroughs should remain in force "until otherwise directed by the legislature." The charter of a city thereby became a state statute and might be amended or repealed like any other statute. This marked the end of municipal independence, and the cities passed completely under the power of the state legislatures. Instead of increasing the independence of the cities, the American Revolution virtually destroyed municipal home rule.

The control of the state legislatures over cities was not extensively exercised until after 1850. The legal right of the legislature to intervene in city affairs was recognized, but it was generally held that it ought not to do so unless the municipality requested. A New York judge in 1815 stated that this was "almost the invariable course of proceedings."<sup>19</sup> As cities grew in importance, however, certain municipal functions, such as water supply, sewage, lighting, police and fire protection, ceased to be wholly local in scope. Besides, the profitable patronage provided by municipal offices attracted the attention of state politicians, and the opportunities offered by city franchises and contracts were spoils too valuable to be left altogether in local hands. State legislators desired a share in the plunder, and legislative interference was gradually extended. The police department was first removed from city control, several states placing the police of their larger cities under the authority of state boards. The value of the cities began to be realized by party leaders interested in the spoils system. Special bills were passed granting to favored companies or persons special local privileges or franchises. Even reformers began to apply to legislatures to correct local evils.

There was much opposition in the cities to the extension of state control. Confidence in the legislature was rapidly replaced by suspicion, and the expanding functions of municipal units led to a demand for local autonomy. In some cases public opinion was so aroused that the state boards were abolished; in others, constitutional amendments were adopted forbidding the legislatures to interfere in matters of purely local concern. Several states went so far as to give the cities the right to make their own charters. In this reaction the municipal home rule movement was started. Issues

<sup>19</sup> *Mayor of New York v. Ordrennan*, 12 *John*, 122 (N. Y.).

and problems had grown up of primary interest to the local community, and only of secondary importance to the state and the nation. At the same time there was need for reorganization of forms of government, designed originally for rural communities and unsuited to urban conditions. A municipal consciousness appeared and a new theory of the position of the city in the larger life of the state was inevitable. At first charters and charter changes were made by special acts of the legislature. The discriminations that were shown against certain cities, and the frequency with which state legislatures, often for purely partisan reasons, interfered in the local affairs of cities, led some states to insist, by constitutional provision, that cities should be dealt with by general law. Under the special-act method, city charters changed from session to session by piecemeal and arbitrary amendments.<sup>20</sup> Only occasionally was there a complete codification of an entire charter. At present, about three-fourths of the state constitutions forbid the legislatures to enact special laws for cities. Some forbid the incorporation of cities by special law; others forbid all special laws relating to municipal affairs.

Sometimes the requirement was evaded by the practice of dividing cities into classes and enacting general legislation for each class. In such cases the courts were compelled to decide whether the classification was a justifiable one, based on real differences among cities that demanded separate treatment, or whether it was an attempt to enact special legislation by means of a law which seemed general in form but was special in application.<sup>21</sup> The general-law system of chartering cities, while it gave the smaller cities some protection against undue legislative interference, was not wholly successful. The state legislatures did not adhere to the spirit of the plan, and American cities were too varied in their needs and problems to be dealt with in a uniform way. It gave the cities no initiative in the framing of their charters, and it made difficult individual experiments in municipal government. Some states<sup>22</sup> modified the plan by allowing the legislature to pass special acts for certain cities, with the proviso that the cities concerned should have a veto on such acts.

While the federal Constitution was based upon the principle of

<sup>20</sup> Of the 681 acts passed by the legislature of New York in 1886, 280 interfered directly with the affairs of some particular county, city, village, or town, specifically named.

<sup>21</sup> *State v. Jones*, 66 *Ohio State*, 453.

<sup>22</sup> New York (1894) and Illinois (1904).

a division of powers between the states and the nation, the states did not until recently apply the same principle in their relation to their municipalities. Throughout the nineteenth century, state legislatures continued to control city affairs through general or special acts. The twentieth century has seen a strong trend toward municipal home rule, checked by state administrative control. Missouri was the first state willing to allow its cities to determine their own form of government. Its constitution of 1875 gave to all cities having a population over 100,000 the right to frame and adopt their own charters. Only three additional states<sup>23</sup> adopted this plan before the end of the century. After 1900 the municipal home rule movement made more rapid headway, and at present fourteen states have written more or less complete municipal home rule provisions into their constitutions. About two-fifths of the American cities of over 25,000 inhabitants possess the power to make their own charters. The charters are usually framed by a charter commission and adopted by popular vote. In some states the governor or the legislature still retains the right to veto proposed charters. As a compromise between the desire of the cities for home rule, and the necessity of state control over activities of more than local concern, some states<sup>24</sup> have adopted the optional charter system. A series of charters of various types is prepared by the state, care being taken to avoid conflicts between charter provisions and state constitutions and laws. The city is then allowed to select the charter that it prefers.<sup>25</sup>

The municipal home rule plan is supported by the following arguments. It enables a city to establish the form of government that its people desire, thus extending the principle of local self-government to a natural and important political unit. It lessens the burdens of the state legislature, and removes the city from the control of its members, many of whom are from rural communities and are ignorant of, or sometimes actually hostile to, the needs of the cities. It promotes civic education by placing the responsibility for good government on the people of the cities, and by compelling them to interest themselves in municipal affairs. A spirit of local patriotism and civic pride is thereby created which is expected to "raise the American city from its present decadence to a position of splendid achievement." Freedom and responsibility are essen-

<sup>23</sup> California, Washington, and Minnesota.

<sup>24</sup> New York, Massachusetts, Ohio, Virginia, North Carolina.

<sup>25</sup> N. Matthews, *Municipal Charters* (1914).

tial to growth and progress. "We have placed our cities in strait-jackets and then expected them to develop strength and character. We have deprived them of self-government and then wondered why self-government was a failure."<sup>26</sup> It also gives greater publicity than was the case under legislative control. It makes possible a separation between municipal and state issues and parties, especially in states where one party controls the large cities and another the rural sections. Historically the national parties have dominated both the states and the cities. The doctrine of the complete subordination of the city to the state strengthened that tendency. In order to carry out its policies, the party in power aimed to secure control of all the units of government, and found in the patronage of the cities one of the main sources of its strength. On the other hand, it is a slow and expensive process, especially when numerous charter amendments are proposed. It is also difficult to draw the line between functions that are properly municipal and those that should come under a wider jurisdiction. For many purposes the city acts as the agent of the state, and many city activities affect communities lying beyond its borders. A certain amount of state supervision must be retained. Moreover, in home rule charters, provisions are often inserted which conflict with the general laws of the state, and expensive and troublesome litigation follows. Some writers opposed the extension of local autonomy to cities. F. J. Goodnow held that "city populations, if permitted to develop free of state control, evince an almost irresistible tendency to establish oligarchical and despotic government."<sup>27</sup> There was a widespread belief that urban populations could not be trusted, and a strong opposition on the part of property interests to the radical tendency of the numerous non-propertied class in the city.

A decided change has taken place in the method by which state control over city activities is exercised. In the earlier period of American government, legislative power in the states was extensive and centralized. As De Tocqueville observed: "In America the legislature of each state is supreme." State administration, on the other hand, was decentralized. The laws were executed by a number of locally elected or appointed officials, responsible to no central state head. This situation was due partly to the American belief in local self-government, partly to the fear of executive authority, and partly to the individualistic opposition to governmental inter-

<sup>26</sup> F. C. Howe, *The City the Hope of Democracy* (1906).

<sup>27</sup> *Municipal Government* (1909), p. 378.



ference in private affairs, especially by central officials. The growth of cities, with their complicated problems and extensive range of interests, did much to break down the old ideas of individualism and of hostility to government. A more social viewpoint was developed and the government was viewed as an agency for state-wide social betterment. The state began to extend its powers of regulation and to provide a variety of new services.<sup>28</sup> In this expansion the contact between state and municipal government again became close, since both were interested in the promotion of education, health, and social welfare, in law enforcement, and in taxing and borrowing.

The new type of state control over cities is administrative rather than legislative in nature. State boards and commissions have been set up to aid, supervise, or control municipal officials. The state legislature is not content to pass a law and leave it to the mercy of independent local agents; it wishes to be assured that the law will be carried out. It lays down certain comprehensive rules, vesting in administrative authorities the power to apply these rules with such modifications as individual cities may require. This tends to limit the evils of special legislation, to avoid the delay and injustice of judicial control, and to secure more prompt and efficient action in the fields where state supervision is desirable. State boards furnish the cities with advice and information, in accordance with the principle of J. S. Mill that "the principal business of the central authority should be to give instruction, of the local authority to apply it."<sup>29</sup> They supervise local administration, give publicity to its methods and results, and arouse public opinion for needed improvements. They give conditional subsidies or "grants in aid,"<sup>30</sup> and raise standards by imposing conditions upon which such aid shall be given. In some cases they have direct powers of control and coercion. The general tendency in modern thought, therefore, is to give the cities a larger degree of municipal home rule in determining the form of their government, but to extend state supervision and control over the activities of cities, not through the state legislatures but through the administrative bodies of the state.<sup>31</sup> The policy of administrative control represents a

<sup>28</sup> L. D. Upson, *The Practice of Municipal Administration in the United States* (1926).

<sup>29</sup> *Representative Government* (1860), Ch. XV.

<sup>30</sup> S. Webb, *Grants in Aid* (1920).

<sup>31</sup> W. T. Arndt, *The Emancipation of the American City* (1917); H. L. McBain, *American City Progress and the Law* (1918).



phase of the modern demand for efficiency, and a growing belief in the value of experts in government. In contrast to the capricious and often ignorant control by state legislatures, administrative control through state boards affords opportunity for trained supervision and for consistency of policy. Lack of coördination among the various state boards, and the strong spirit of local home rule are, nevertheless, obstacles to the success of administrative control.

### 3. FORMS OF CITY GOVERNMENT

The original system of borough government in America was transplanted from England. Charters were granted to close corporations of leading citizens. A governing body, usually called the "mayor, alderman, and commonalty" of the borough, was endowed with corporate powers and given a considerable range of authority. The aldermen and councilmen were usually elected by the qualified voters, though in some boroughs they were a self-perpetuating body. The mayor was usually appointed by the governor. Mayor, aldermen, and councilors sat in a single body, the mayor presiding, but having no veto and usually no appointing power. The mayor and aldermen also formed the borough court. There was no separation of legislative, executive, and judicial organization or functions; authority was centralized in the council. Suffrage was restricted to the "freemen" of the borough, who were a limited and privileged class. The boroughs were poor and backward, and performed but few municipal services.

The American Revolution did not modify the general form of municipal government in any important respect. After the adoption of the Constitution, however, the new ideas embodied in that document began to work their way into the framework of city government.<sup>32</sup> Legislative, executive, and judicial powers, centralized in the council, could not be reconciled with the principle of separation of powers, and an effort was made to readjust the political organization of the city and make it conform to the general scheme of the federal government. The mayor was made more independent, was separately elected, and was given the power of veto and of appointment. The council was made bicameral; judicial functions were transferred to the state courts. Men took it for granted that if the principle of checks and balances was valid in the nation and in the

<sup>32</sup> H. L. McBain, "Evolution of Types of City Government in the United States," in *National Municipal Review*, VI, 19-20 (Jan., 1917).

states, it was also valid in the government of cities. Only in the New England towns and in the counties did Montesquieu's dictum fail to gain a foothold. The office of mayor gained in importance; in some cities his expanding powers were severely criticized. As the suffrage was widened, with the growing democratic sentiment of the country, many other administrative officials in the city were chosen by election, and the administrative departments thereby became badly decentralized. The spoils system and the belief in rotation in office also became firmly entrenched in the cities, with resultant instability in municipal administration. City elections were fought on national issues.

By the middle of the nineteenth century the dominant characteristics of American city government had become firmly fixed. The cities were definitely committed to the spoils system, to the fusion of city and national politics, and to the principle of separation of powers. Inefficiency and corruption in municipal politics were especially marked in the three decades following the Civil War. The caliber of councilmen declined with the introduction of manhood suffrage, and the tendency to multiply elective boards and departments destroyed all cohesion and unity in administration. After 1850 there was a marked tendency to vest the appointment of such officials in the mayor, whose power steadily grew at the expense of the council. This tendency was also influenced by the federal analogy. It secured a better organization of departments and a form of responsibility. The double-chambered council was generally abolished, and the resultant single chamber was reduced in size. Efforts in general were directed toward simplifying and centralizing the municipal machinery. The introduction of the civil service system toward the close of the century resulted in a further increase in efficiency.

The opening of the twentieth century marked a new epoch in American government. Reformers had been urging that the municipal system should be completely remodeled. Popular dissatisfaction with the conduct of municipal affairs had been thoroughly aroused, and the country was on the eve of a general civic awakening. A flood that destroyed a large part of the city of Galveston and virtually forced it into a receivership for bankruptcy gave the opportunity for a new system. Ignoring the politicians, the business men of the city drafted a plan which abolished the old mayor-council type of organization, and substituted for it a simple, unified commission. In submitting this plan to the state legislature they

said: "We believe that municipal government, as it has been administered in this community for the past twenty years, is a failure . . . We are asking for a charter placing the entire control of the local government in the hands of five commissioners, designed to benefit the people rather than to provide sinecures for the politicians." This plan was adopted by the state legislature in 1901. The commission was authorized to act as the city council, with authority to pass ordinances, levy taxes, make appropriations, grant franchises, and make contracts. It was also authorized to apportion the functions of administration among its members, each becoming the head of a department. Legislative and administrative functions were combined in the same hands; the system of checks and balances was abandoned.

The act creating the Galveston commission provided that three of the commissioners should be appointed by the governor of Texas and two elected by the voters of the city. The act was attacked as unconstitutional, and the supreme court of the state held<sup>33</sup> that the legislature had no power to vest in the governor the appointment of municipal officers. Thereupon the charter was amended making all the commissioners elective by the voters of the city. The original Galveston plan was an emergency arrangement, not intended to be permanent, nor to be a model for other cities. Its success, however, attracted widespread interest and gave a marked stimulus to municipal reform. In a few years it had spread to other cities in Texas and northward to Des Moines in Iowa. From this new center it moved rapidly east and west, often adding provisions for initiative, referendum, and recall. Old-school politicians attacked the plan as undemocratic, un-American, and a return to the Greek form of government by a group of tyrants; but public opinion, psychologically ready for a new experiment in city government, welcomed the new idea. Many states passed general laws permitting any city to adopt the commission plan.<sup>34</sup> By 1914 more than four hundred cities, usually of moderate size, had adopted the new plan. After that date the movement lost momentum, and in recent years it has even lost some ground.

The chief merits of the plan are its simplicity and its concentration of powers. It focuses public attention on one governing body

<sup>33</sup> *Ex parte Lewis*, 45 *Texas Criminal Reports*, 1 (1900).

<sup>34</sup> E. S. Bradford, *Commission Government in American Cities* (1911); C. R. Woodruff, *City Government by Commission* (1911); T. S. Chang, *History and Analysis of the Commission and City Manager Plans of Municipal Government* (1918).

and does away with the former elaborate system with its checks and balances. It is more intelligible to the average citizen than the complicated and obscure provisions of the older charters, behind which the professional politicians could hide. It promotes harmony, promptness, and publicity in municipal affairs, and attracts to municipal office men of higher average caliber. On the other hand the plan has serious defects.<sup>35</sup> It does not provide a unified executive, nor a single concentrated responsibility. Plural executives are seldom satisfactory, and the commission plan has the usual weakness of board-government in contrast to a single executive head. The commission is often divided against itself. The commission is also often too small to represent properly the various interests or sections of the city. There is, moreover, no guarantee that capable and expert officials will control the departments of administration, since the members of the commission are frequently not properly qualified to deal with their technical duties as departmental administrative heads. While the commission plan works well in some of the smaller communities, its chief value lay in its protest against the old order and in the revolution it worked in the right direction in hundreds of cities. It gave impetus to the movement for municipal reform and created widespread public interest in the problems of city government.

The defects of commission government in failing to secure unified central control in administration and in failing to secure expert heads of administrative departments were soon recognized. In the desire to secure more efficient government, reformers turned to the analogy of corporate business. Chambers of commerce, boards of trade, and other business organizations became active in the movement for new city charters and in the demand for a "business government." It became increasingly evident that, with the expansion of municipal functions, city government was becoming largely a problem of administration, and that the system of organization which had been developed to manage large private enterprises might also be applied to the management of cities. The voters, as the "stockholders of the city," should choose a commission, or "board of directors," which should control the general policy of the municipal corporation, but who should employ a trained general manager to direct its administration and to select his subordinates and coördinate their activities. From this point of view

<sup>35</sup> C. M. Fassett, "The Weakness of the Commission Plan," in *National Municipal Review*, IX, 642-647 (Oct., 1920).

the City Manager plan<sup>36</sup> was worked out. It aimed to retain the merits of the Commission plan but to avoid its chief weakness.

Dayton, Ohio, in 1913, was the first important city to put the managerial idea into practice. In urging the adoption of the new charter, its supporters stated that "we have taken a step in advance of the commission-governed cities and provided a remedy for the generally acknowledged defect of such forms. We have provided a chief administrative officer named the city manager whose duty it shall be to supervise and control the conduct and operations of all officers and employees of the city and to manage the affairs of the city in an efficient and economical manner. We are convinced that this centralized action of administrative authority will produce businesslike methods in city government and fix responsibility for official action."<sup>37</sup>

In the City Manager plan, the commission, or council, elected by the voters of the city, is the legislative organ. It enacts ordinances, controls finances, and determines all questions of general municipal policy. It selects and may remove the city manager, and vests in him the power of appointing and supervising the officials of administration. Legislative and executive departments are again separated to some extent, though the executive, being responsible to the legislature, is not independent. In this respect it resembles in some ways the cabinet system of government as developed in England. The city manager has the right to be present at all meetings of the council, to make recommendations to it, and to take part in its deliberations, though he has no vote. The Dayton charter provided that the city manager should hold office for no fixed term, being removable by the commission at any time. It also provided that the city manager "may or may not be a resident of the city." This brought two new ideas into the theory of American municipal government. In contrast to the fixed terms of other elected officials, and to the general custom of selecting officials from the residents of the locality that they represent, the City Manager plan makes possible indefinite tenure and the selection of a trained municipal expert from any part of the country. These provisions have done

<sup>36</sup> H. A. Toulmin, Jr., *The City Manager* (1915); C. E. Rightor, *The City Manager Plan in Dayton* (1919); T. S. Chang, *History and Analysis of the Commission and City Manager Plans* (1918); C. R. Woodruff, ed., *New Municipal Program* (1919); B. T. Crane, *Digest of City Manager Charters* (1922).

<sup>37</sup> Statement issued to the voters by the charter board in explanation of the proposed charter.



much to strengthen the theory of special training for public service, and of politics as a professional career.<sup>38</sup>

During the last ten years the City Manager plan has spread rapidly. The name is popular, suggesting a business government; and those who demand efficiency in municipal administration of finances, public works, fire and police protection, and the like welcome a plan which promises to remove municipal business, to some extent, from the control of local politicians. Many cities which had adopted the commission form of government accepted the new plan as a step in advance. Other cities, which had not favored the Commission Plan, were converted to the city manager idea. At present more than three hundred cities have accepted, wholly or in part, the new system. While there is no guarantee that the commission will select a competent manager, nor that the manager will be able to work harmoniously with the commission, avoid entanglements in local politics, or appoint competent subordinates, nevertheless the plan has much to commend it, and if properly worked promises great improvement in one of the most difficult problems of democratic government. As President Lowell says, it is "the best that has yet been proposed for American cities, and the one most in harmony with the spirit of our institutions."<sup>39</sup>

In summary it may be said that American political theory in dealing with the recent and important question of city government<sup>40</sup> has tended in the direction of municipal home rule, of placing such state control as is necessary in administrative rather than in legislative bodies, and in a demand for efficient and businesslike municipal organization. There has been a marked tendency to abandon the time-honored theory of checks and balances, to simplify the structure of government, and to concentrate responsibility. At the same time, new devices for popular control, in the form of initiative, referendum, and recall, have often been adopted to supply the check

<sup>38</sup> E. A. Fitzpatrick, *Experts in City Government* (1918).

<sup>39</sup> *Municipal Program* (1919), p. 45.

<sup>40</sup> Recent books on city government in the United States include: W. B. Munro, *Municipal Government and Administration* (2 vols., 1923); J. A. Fairlie, *Municipal Administration* (1901), *Essays on Municipal Administration* (1908); E. McQuillin, *Treatise on the Law of Municipal Corporations* (1911-1919); F. J. Goodnow and F. G. Bates, *Municipal Government* (1919); W. P. Capes, *The Modern City and Its Government* (1922); H. G. James, *Municipal Functions* (1917); A. B. Gilbert, *American Cities* (1918); M. L. Cooke, *Our Cities Awake* (1918); H. Bruère, *The New City Government* (1913); T. H. Reed, *Municipal Government in the United States* (1926); W. Anderson, *American City Government* (1925); D. F. Wilcox, *Great Cities in America* (1910).



and balance destroyed by the new plan of consolidation. In addition there has been a marked extension of municipal functions, especially in the direction of programs of social reform, of regulation of public utilities, and of experiments with municipal ownership and operation. A municipal consciousness and interest has developed, and a growing realization is apparent of the importance of the city in the larger life of the state and the nation. The early statesmen of the Republic thought of democracy as agrarian in composition and rural in its outlook. At present the rush of population to large industrial and urban centers has created new problems and has modified the philosophy of government upon which the United States was originally established. The individualistic attitude has broken down under the complex conditions of dense city population, and the socialistic expansion of governing power creates great opportunities and great dangers.

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## 608 HISTORY OF AMERICAN POLITICAL THOUGHT

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## CHAPTER XIX

### NEW INFLUENCES ON AMERICAN POLITICAL THOUGHT

Before the middle of the nineteenth century there was little organized, scientific study of government in the United States. There were shrewd comments on practical politics in the writings of statesmen, such as Hamilton, Madison, Adams, and Jefferson; and there were learned juristic arguments and discussions in the writings of Marshall, Story, Calhoun, and Webster. John Adams<sup>1</sup> and Calhoun<sup>2</sup> most nearly approached a general, systematic treatment. After 1850 the scientific study of government was begun, under the leadership of Francis Lieber.<sup>3</sup> He used the historical and comparative method, and brought to the study of politics a more impartial and objective attitude. He also began the influence, which has steadily increased, of university study and research in American political thought. Following his work, schools of history and political science were established at Johns Hopkins, under Herbert B. Adams, at Cornell, under Andrew D. White, and at Columbia, under J. W. Burgess and W. A. Dunning. These men and their students laid the foundations of modern methods of scientific political inquiry.<sup>4</sup>

During the entire century, however, political science was largely in the hands of men trained in the verbalism of jurisprudence, and their work was confined mainly to constitutional principles or to logical abstractions. Toward the close of the century, interest was aroused in the forces behind government and in the nature and operations of political parties. The speculative, idealistic philosophy of the Germans and the rigid Austinian jurisprudence of the English were declining, and new methods of research, drawing data from many fields, were being opened up. A stimulus to this type of inquiry was given by the writings of James Bryce and of M. Ostro-

<sup>1</sup> *Defense of the Constitutions of Government in the United States* (1787).

<sup>2</sup> "Disquisition on Government," in his *Works* (1833), Vol. I.

<sup>3</sup> Especially his *Civil Liberty and Self-Government* (1853). Another general work of this period was F. Grimké, *Considerations on the Nature and Tendencies of Free Institutions* (1848).

<sup>4</sup> H. W. Odum, ed., *American Masters of Social Science* (1927).

gorski, and their method was continued in America by A. L. Lowell and Woodrow Wilson. The juristic point of view was replaced by an investigation into the motives that led men to take part in the governing process and into the causes that determined the functions of politics. Interest in political organizations and machinery was replaced by interest in political activities and practices. There was still insufficient realization of the importance of economic and social forces underlying the evolution of political institutions, and in the psychological processes that condition them. Jurisprudence, somewhat later, underwent a similar transformation. Viewed at first as an esoteric and mysterious science, dealing largely with unchanging verbal abstractions, it became increasingly apparent that law was a form of social and economic expression, and that it must grow and adopt itself to changing conditions. In place of the eternal principles of justice, jurists began to give attention to the social forces beneath the existing order and to the social effects of legal institutions and doctrines.

The writing of American history underwent a similar transformation. The earlier writings had dealt chiefly with the political and military aspects of our national life, had overemphasized the importance of national heroes, and had perpetuated many myths, traditions, and prejudices. Historians had drawn their material largely from dry documentary material, collecting facts as geologists collect fossils. Recent historians have given more accurate and realistic descriptions of the social forces underlying American development.<sup>5</sup> F. J. Turner<sup>6</sup> and his followers showed the influence of the Western frontier; C. A. Beard,<sup>7</sup> A. M. Schlesinger,<sup>8</sup> and many others pointed out the importance of economic forces and interests;<sup>9</sup> J. F. Jameson<sup>10</sup> attacked the mythology of the American Revolution, and W. E. Dodd,<sup>11</sup> that of the old South. J. H. Robinson<sup>12</sup> and H. E. Barnes<sup>13</sup> widened the conception of history

<sup>5</sup> A. M. Simons, *Social Forces in American History* (1911); A. B. Hart, ed., *Social and Economic Forces in American History* (1913).

<sup>6</sup> *The Frontier in American History* (1920); *Rise of the New West* (1906).

<sup>7</sup> *Economic Interpretation of the Constitution* (1913); *Economic Origins of Jeffersonian Democracy* (1915); *Economic Basis of Politics* (1922). C. A. and M. R. Beard, *The Rise of American Civilization* (2 vols., 1927).

<sup>8</sup> *New Viewpoints in American History* (1922).

<sup>9</sup> E. R. A. Seligman, *The Economic Interpretation of History* (1902).

<sup>10</sup> *The American Revolution Considered as a Social Movement* (1926).

<sup>11</sup> *The Cotton Kingdom* (1919).

<sup>12</sup> *The New History* (1912); *The Mind in the Making* (1921); *The Humanizing of Knowledge* (1923).

<sup>13</sup> *History and Social Intelligence* (1926); *The New History and the Social Studies* (1925); *Sociology and Political Theory* (1924).

to include the growth of intelligence and the influence of the intellectual classes on the course of human development. The work of this group has done much to break down the provincialism and narrowness of earlier political thought.

By the opening of the twentieth century, political thought began to be influenced by progress made in many other phases of intellectual inquiry.<sup>14</sup> Biological and anthropological studies<sup>15</sup> threw light on political origins and development, and upon the specific characteristics of racial groups. They gave a stimulus to the methods of scientific research, rather than to those of abstract speculation. They emphasized the evolutionary point of view, attacked many of the earlier ideas of racial supremacy,<sup>16</sup> and introduced into politics the problems of the modern study of eugenics. While the evolutionary idea had been suggested by the earlier historical method, it had been used mainly to oppose revolutionary proposals, since human institutions were the result of slow growth, or to support nationalistic propaganda, by emphasizing the organic unity of the nation as a result of historical development. The biological idea of evolution assumed a ceaseless process of life and growth, of variation and adaptation. It denied the sacredness of the past and the achievement of any fixed and perfect condition. From this point of view it attacked tradition and conservatism, and supported the liberal doctrines of change and reform. Biology also emphasized the importance of heredity, and attacked the earlier ideas of human equality and of the infinite capacity of each individual for improvement through education. The effect of this teaching upon the theory of democracy is obvious.<sup>17</sup> In its study of racial capacities it compelled a reëxamination of the earlier theories concerning the adjustment of power and responsibility between

<sup>14</sup> G. E. G. Catlin, *The Science and Method of Politics* (1927); W. F. Ogburn and A. Goldenweiser, eds., *The Social Sciences and Their Interrelations* (1927).

<sup>15</sup> R. H. Lowie, *The Origin of the State* (1927); F. H. Hankins, "Race as a Factor in Political Theory," in C. E. Merriam and H. E. Barnes, eds., *History of Political Theories, Recent Times* (1924), Ch. XIII; J. L. Myres, "The Influence of Anthropology on the Course of Political Science," in *University of California Publications*, IV, No. 1 (1916); S. J. Holmes, *The Trend of the Race* (1921); P. Popenoe and R. H. Johnson, *Applied Eugenics* (1918); G. Wallas, *Our Social Heritage* (1921); F. J. Teggart, *The Processes of History* (1918); H. J. Ford, *The Natural History of the State* (1915); E. G. Conklin, *The Direction of Human Evolution* (1923).

<sup>16</sup> F. H. Hankins, *The Racial Basis of Civilization* (1924); A. A. Goldenweiser, "Race and Culture in the Modern World," in *Journal of Social Forces*, Nov., 1924.

<sup>17</sup> H. H. Goddard, *Human Efficiency and Levels of Intelligence* (1920).

the advanced and the backward states of the world and concerning the government of dependencies.

The application of the sociological viewpoint and of sociological conceptions to political theory<sup>18</sup> has decidedly modified many of the earlier ideas concerning the state. Many recent writers have abandoned the doctrine of the absolute sovereign state as a unique entity, and view it rather as a specialized social organization, distinguished from other social organizations by the power to exercise coercive force, and acting as an arbiter in the conflict of various "interest groups" in society at large.<sup>19</sup> This newer theory contends that many functions formerly exercised by the state should be transferred to other associations acting independently of state sovereignty. The conception of "pluralistic sovereignty," which views the state as merely one of a number of associations to which men owe allegiance, draws heavily on sociological data.<sup>20</sup> The existing political structure is criticized on the basis of its inadaptability as a regulative factor in the complex social and industrial society of to-day, and arguments are made for self-government in the hands of religious, educational, and economic groups. From this point of view, also, the present system of representation, based on geographical population groups, is attacked; and it is urged that representation of vocational and professional groups would more adequately represent the social interests in the modern state.<sup>21</sup> The new theories of pluralism reflect the new economic groupings that have become so conspicuous in recent social development.

Emphasis on social solidarity has also modified the Austinian conception of law as the expression of the sovereign will of the state, and has returned to the earlier doctrine of law as superior and prior to political organization. It views law as a social rule invested with a social sanction, whose validity depends upon the

<sup>18</sup> H. E. Barnes, *Sociology and Political Theory* (1924); J. P. Lichtenberger, *Development of Social Theory* (1923); E. S. Bogardus, *History of Social Thought* (1922).

<sup>19</sup> A. F. Bentley, *The Process of Government* (1908); M. P. Follett, *The New State* (1918); F. J. Giddings, *The Responsible State* (1918).

<sup>20</sup> F. W. Coker, "Pluralistic Theories and the Attack upon State Sovereignty," in C. E. Merriam and H. E. Barnes, eds., *Political Theories, Recent Times* (1924), Ch. III; W. Y. Elliott, "The Pragmatic Politics of H. J. Laski," in *Amer. Pol. Sci. Rev.*, XVIII, No. 2 (May, 1924); E. D. Ellis, "The Pluralistic State," *ibid.*, XIV, 393-407 (Aug., 1920); G. H. Sabine, "Pluralism a Point of View," *ibid.*, XVII, 34-50 (Feb., 1923).

<sup>21</sup> This doctrine is best stated by the English Guild Socialists. See G. D. H. Cole, *Social Theory* (1920), *Guild Socialism Restated* (1921); S. G. Hobson, *National Guilds and the State* (1920); N. Carpenter, *Guild Socialism* (1922).



social ends that it serves and promotes.<sup>22</sup> The sociological jurists hold that all vital law is a product of society, created by social interests, and generally obeyed only when supported by public opinion.<sup>23</sup> They study law "as a phase of social control and seek to understand its place in the whole scheme of the social order; they regard the working of a law rather than its abstract content; they think of law as a social institution which may be improved by intelligent human effort, and hold it the duty of jurists to discover the means of furthering and directing that effort; and they lay stress upon the social purposes which law subserves rather than upon theories of sanction."<sup>24</sup>

The sociological viewpoint emphasizes the principle of relativity in government. It denies the existence of an absolute "best" form of state, and holds that the most desirable type is the one best suited to the needs of the existing society at a particular time. It denies that men possess abstract "rights," but insists that rights are originated, determined, and limited by social interests and necessity. It rejects the conception of the state as a collective policeman with negative, prohibitive functions only, but believes in constructive and promotive social legislation for the furthering of social progress. It views political parties as organizations representing distinct interests, for which they desire public aid and protection; and it gives attention to many sources and organs of social control that form extra-legal phases of politics. The synthetic approach which characterizes much of the best writing in recent American political thought shows the wide influence exerted by sociological studies on political theory and upon political practice.

Significant progress was made in the nineteenth century in social geography, dealing with the influence of the physical en-

<sup>22</sup> L. Duguit, *Law in the Modern State* (trans. by F. and H. Laski, 1919); H. Krabbe, *The Modern Idea of the State* (trans. by G. H. Sabine and W. J. Shepard, 1922); J. M. Mathews, "Recent Development in Political Theory," in *Political Science Quarterly*, XXIV, 284-395 (June, 1909); W. J. Brown, "The Jurisprudence of M. Duguit," in *Law Quarterly Review*, XXXII, 168-183 (1916); W. Y. Elliott, "The Metaphysics of Duguit's Pragmatic Conception of Law," in *Political Science Quarterly*, XXXVII, No. 4 (Dec., 1922).

<sup>23</sup> R. Pound, "Scope and Purpose of Sociological Jurisprudence," in *Harvard Law Review* (June, 1911-April, 1912); *Introduction to the Philosophy of Law* (1922); *Interpretations of Legal History* (1923); *Law and Morals* (1924).

<sup>24</sup> R. Pound, "Sociology and Law," in A. F. Ogburn and A. Goldenweiser, eds., *The Social Sciences and Their Interrelations* (1927).

vironment upon human institutions. The configuration of the earth's surface, climate, and natural resources were studied in their relation to political science; and their influence upon the formation of states, upon the direction of their external expansion and activities, and upon their domestic policies and their international relations were pointed out. Under the influence of German geographers, such as Humboldt, Ritter, and Ratzel, the American writers began to apply this method to explain in part our national development. Considerable influence was exerted also by the publication of H. T. Buckle's *History of Civilization in England* (1857-1861), in which the relationship between natural conditions and human development was emphasized. In 1884, N. S. Shaler contributed a brief section on the "Physiography of North America" to J. Winsor's *Narrative and Critical History of America*,<sup>25</sup> and later he expanded his ideas in a book entitled *Nature and Man in America* (1891). In 1893, F. J. Turner read an epoch-making address, entitled "The Significance of the Frontier in American History,"<sup>26</sup> before the American Historical Association. His thesis was that the existence of free land, the continuous recession of the frontier, and the advance of American settlement westward were the chief influences in American development. After 1900 numerous writers in books and monographic studies discussed the importance of physical influences on American history.<sup>27</sup>

These writers pointed out the connection between the physical isolation of the New World and the American Revolution, the American policy of isolation in world politics, and the Monroe Doctrine. They also showed that, with the removal of geographical barriers and with improved means of transportation and communi-

<sup>25</sup> Vol. IV, pp. i-xxx.

<sup>26</sup> American Historical Association, *Annual Report, 1893*, pp. 197-227. See also his *The Frontier in American History* (1920).

<sup>27</sup> E. C. Semple, *American History and Its Geographic Conditions* (1903); A. P. Brigham, *Geographic Influences in American History* (1903); A. B. Hulbert, *Historic Highways of America* (16 vols., 1902-1905), "The Increasing Debt of History to Science," in American Antiquarian Society, *Proceedings*, XXIX, 29-42 (1919); D. R. Fox, "American History and the Map," in *Harper's Atlas of American History* (1920); A. M. Schlesinger, *New Viewpoints in American History* (1922), Ch. II; F. Thomas, "Some Representative Contributions of Anthro-geo-geography to Political Theory," in C. E. Merriam and H. E. Barnes, eds., *Political Theories, Recent Times* (1924), Ch. XII; E. Huntington, *World Power and Evolution* (1919), *Civilization and Climate* (1915); A. T. Mahan, *The Interest of America in Sea Power* (1897); C. O. Sauer, "Geography and the Gerrymander," in *American Political Science Review*, XII, 403 (Aug., 1918); "Recent Developments in Cultural Geography," in E. C. Hayes, ed., *Recent Developments in the Social Sciences* (1927); F. Thomas, *The Environmental Basis of Society* (1925).

ation, American foreign policy was bound to change and new international duties and responsibilities would arise. They discussed the importance of geographical factors on the "Manifest Destiny" of our westward expansion, on the democratic attitude of the new West, and on the sectional differences between North and South. The importance of wheat, corn, and cotton, and of iron, coal, and oil in creating political issues and in determining foreign policies was given attention. Working in coöperation with the writers who gave chief attention to the influence of economic factors, the students of the physical environment did much to place American political thought on a concrete and pragmatic basis. They showed that the ideas and policies of statesmen and of parties were usually based on natural facts resulting from the physical conditions of the American world. The earlier emphasis on religious, moral, and idealistic doctrines and on the influence of great individuals was replaced by the theory of geographic and economic determinism, and by the belief that the ideas of each period were influenced, and in the end controlled, by the physical and economic background.<sup>28</sup>

The application of statistical methods to the study of politics of social data, and with the accumulation of a large mass of definite made rapid progress after the latter part of the nineteenth century.<sup>29</sup> The American Statistical Society, established in 1839, was reorganized in 1888 and accumulated valuable data for the use of the social sciences. The workers of the United States census bureau, under the direction of General Walker, collected large masses of comparable information. In connection with the growth of public finance and the demands of taxation, the needs of military organization, and the rise of electoral devices, the governmental statistical service expanded rapidly.<sup>30</sup> States and cities later organized research bureaus; and private foundations and individual students made careful studies and surveys.

With improvement in the methods of quantitative measurement facts, new interpretations in the field of political thought were made. This method was in striking contrast to the earlier forms of discussion and generalization based on impressions and beliefs

<sup>28</sup> C. D. Wright, *Industrial Evolution of the United States* (1895); D. R. Dewey, *Financial History of the United States* (1902); K. Coman, *Industrial History of the United States* (1905); E. L. Bogart, *Economic History of the United States* (1907).

<sup>29</sup> J. Koren, ed., *History of Statistics* (1918).

<sup>30</sup> L. F. Schmeckebier, *The Statistical Work of the National Government* (1925).

that were frequently erroneous. While definite information on many questions is difficult to secure, and while political situations are extremely complex, containing many factors which it is difficult to isolate or to estimate properly, the statistical method has decided advantages and will probably be increasingly useful. It aims to replace the earlier rule-of-thumb methods by accurate data, and to make politics less of an art and more of a science. The wide prevalence of mere opinion and assertion in political thought, and the danger of prejudice and of doctrines based on interest, makes the collection and interpretation of actual facts a necessity for sound political thinking.<sup>31</sup> In contrast to the *a priori* and deductive method of politics prior to 1850, and to the historical and comparative method, which was dominant in the latter half of the nineteenth century, the modern method shows a distinct tendency toward observation, survey, and measurement.

American political thought has been considerably influenced by changes that have taken place in the philosophical point of view in recent years.<sup>32</sup> In the latter part of the nineteenth century, the idealism of Hegel, liberalized somewhat by the English idealist, T. H. Green, was still dominant in America, though it had been modified by the influence of the evolutionary and utilitarian doctrines of Spencer and Mill. This philosophy emphasized the organic unity of the state and the necessity of a common mind or will. It tended to subordinate the various social groups to the state. The leading American idealist, Josiah Royce, in his earlier writings, emphasized the value of unity and organization, called individualism "the sin against the Holy Ghost," and taught that the individual was lost unless saved by membership in "The Great Community."<sup>33</sup> He had all confidence in the state as the organizer of human life. In his later writings,<sup>34</sup> however, he lost confidence in the state and turned to religion and science as unifying forces in place of the political world.

A more important contribution to political thought was made by the school of pragmatic philosophers, started by William

<sup>31</sup> C. E. Merriam, *New Aspects of Politics* (1925), Ch. IV; C. E. Merriam and H. F. Gosnell, *Non-Voting* (1924); G. A. Weber, *Organized Efforts for the Improvement of Administration* (1919); R. T. Crane, "Progress Report of Committee on Political Research," in *American Political Science Review*, XVII, No. 2 (May, 1923).

<sup>32</sup> T. W. Riley, *American Thought from Puritanism to Pragmatism* (1915).

<sup>33</sup> *The Religious Aspect of Philosophy* (1885); *Spirit of Modern Philosophy* (1892).

<sup>34</sup> *The Problem of Christianity* (2 vols., 1913).

James<sup>35</sup> and continued by John Dewey<sup>36</sup> and a group interested in social ethics.<sup>37</sup> The Pragmatists were less interested in absolute principles and ultimate purposes; their method was scientific and experimental, and they judged institutions by their results. Their philosophy was tentative, growing out of developing life, and their ethical theory was relative and evolutionary. They believed that democracy required a new philosophy in accordance with modern conditions, and they emphasized the value of social education and social efficiency. The older philosophies had subordinated the individual to the institution and made the national state the agency of development. The new philosophy viewed society as pluralistic, composed of a variety of associations, of which the state was one, and for many purposes a comparatively unimportant one. Its main purpose was to correlate the activities of other associations, so that the various interests of individuals might be carried on with a minimum of interference. The conflict of ideals<sup>38</sup> between Idealists and Pragmatists raised issues of importance in political theory. Whether sovereignty is monistic or pluralistic; whether moral principles are fixed, or ever-changing, or of no importance; and whether democracy is possible or desirable, are among the questions opened up by the new philosophic movements. The practical applications in the fields of law, administration, and politics have already been noteworthy, and the tendencies and methods of pragmatic philosophy are in accordance with the critical constructive movement of the present age.

One of the most important of the recent influences on American political thought has been the application of the newer psychology to politics. Political thinkers in the past frequently utilized the psychology that was current in their times as a basis of their philosophy,<sup>39</sup> and practical politicians have usually been rule-of-thumb psychologists. The need of a more careful study of political psychology has been pointed out by numerous recent writers. President Lowell stated that "the last generation has made great strides

<sup>35</sup> *The Will to Believe* (1897); *Pragmatism* (1907); *A Pluralistic Universe* (1909); *The Meaning of Truth* (1909).

<sup>36</sup> *The School and Society* (1899); *Influence of Darwin on Philosophy* (1910); *Democracy and Education* (1916); *Reconstruction in Philosophy* (1920); *Human Nature and Conduct* (1922).

<sup>37</sup> J. H. Tufts, *Our Democracy* (1917); J. Addams, *Democracy and Social Ethics* (1902); J. Dewey and others, *Creative Intelligence* (1917).

<sup>38</sup> R. B. Perry, *The Present Conflict of Ideas* (1918).

<sup>39</sup> For example, Plato, *Republic*; Machiavelli, *The Prince*; Hobbes, *Leviathan*; Locke, *Two Treatises on Government*; Rousseau, *Social Contract*; Bentham, *Fragment on Government*.



in the study of psychology . . . but the normal forces that govern the ordinary conduct of men in their relations have scarcely received any scientific treatment at all."<sup>40</sup> James Bryce said: "Politics accordingly has its roots in psychology, the study (in their actuality) of the mental habits and volitional proclivities of mankind."<sup>41</sup> Numerous psychologists, interested in the social aspects of their subject, have emphasized the psychic factor in the origin, forces, and changes of political phenomena.<sup>42</sup> Besides, psychology has become less speculative and more experimental, and in this process lends itself to many practical applications to politics. Psychological tests have been used by the American government in the army and in the civil service. The alienist and the psychiatrist have given valuable aid to the courts. The results of psychological tests and studies affect the theory of public education, citizenship, immigration restriction, and democracy in general.

The application of psychology to politics has brought about a reaction against the mere description of political structures and the study of constitutional rights and powers. It has led to an attempt to probe the dynamics of political control, and to seek the causes of political action, not in the workings of governmental machinery, but in the motives that influence individual leaders and the representatives of various interests. Particular attention in recent years has been given to the psychology of group action.<sup>43</sup>

<sup>40</sup> *Government of England* (1909), I, 449. See also his "Physiology of Politics," in *American Political Science Review*, IV, 1-15 (Feb., 1910).

<sup>41</sup> *Modern Democracies*, I, 15 (1921).

<sup>42</sup> H. M. Kallen, "Political Science as Psychology," in *American Political Science Review*, XVII, No. 2 (May, 1918); C. E. Gehlke, "Social Psychology and Political Theory," in C. E. Merriam and H. E. Barnes, eds., *Political Theories, Recent Times* (1924), Ch. X; M. M. Davis, *Psychological Interpretations of Society* (1909); C. E. Merriam, *New Aspects of Politics* (1926), Ch. III; "The Significance of Psychology for the Study of Politics," in *American Political Science Review*, XVIII, 469 (Aug., 1924); H. F. Gosnell, "Some Practical Applications of Psychology to Politics," in *American Journal of Sociology*, XXVIII, 735 (May, 1923); H. E. Barnes, "Some Contributions of American Psychology to Modern Social Theory," in *Sociological Review*, XIII, 153-156 (1921).

<sup>43</sup> S. Eldridge, *Political Action* (1923); J. Dewey, *Human Nature and Conduct* (1922); W. Lippmann, *Public Opinion* (1922), *A Preface to Politics* (1913); C. H. Cooley, *Social Organization* (1909); M. P. Follett, *The New State* (1918); A. F. Bentley, *The Process of Government* (1908); W. McDougall, *Social Psychology* (1914), *The Group Mind* (1920), *Is America Safe for Democracy?* (1921); E. D. Martin, *The Behavior of Crowds* (1920); J. M. Williams, *The Principles of Social Psychology* (1922); E. S. Bogardus, *The Essentials of Social Psychology* (1920); A. S. Balz, *The Basis of Social Theory* (1924); A. D. Weeks, *The Control of the Social Mind* (1923); K. Young, "Social Psychology," in H. E. Barnes, ed., *The History and Prospects of the Social Sciences* (1925), Ch. IV; J. M. Baldwin, *The Individual and Society* (1911).



The gregarious instincts of men and the tendency of groups to follow impulses and emotions, to imitate and accept suggestions, opens up an interesting field of political psychology. In internal politics and in international relations the modern nation is guided largely by appeals to the group consciousness of its members; and skilful leaders and politicians make use of this tendency. Habits, customs, and folk-ways are powerful means of social control, and political slogans and shibboleths, crazes and fads, often arouse effective, though unreasoning, emotions. Efforts to assimilate minority groups and to create a homogeneous, patriotic, state consciousness and, on the other hand, the existence of diverse interests of various groups, national, religious, and economic, and their desire to maintain autonomy and self-direction are important problems in the modern state. The growth of pluralism, of socialism, of syndicalism, and similar doctrines, is based upon the psychology of class-conscious groups. Modern political theory is interested in political behavior and attempts to study how and why people in groups feel and think about political issues. The methods of forming public opinion, the use of propaganda, and the qualities that make for political leadership are important problems in modern democracies.<sup>44</sup> The ideas and sentiments revolving around the city, the state, and the nation are essential elements in political thought.

In the nineteenth century, politics learned to take cognizance of historical, economic, and social forces; in recent years, it has begun to examine the new insights into human nature offered by biology and psychology. The political thought of the future may be a synthesis of many elements, drawn from many fields, and using more scientific methods in the observation, measurement, and comparison of political phenomena. "The new politics would bridge the gap between art and science, and bring us to more precise methods of political and social control than mankind has hitherto possessed. The new politics looks forward as well as backward. It would supplement traditional lore with experiment; it would be constructive and inventive as well as customary and habitual. It would create and control habits as well as utilize those that are handed down. It would use the mechanisms of education and eugenics for political and social organization and control. The new politics would not be unmindful of history or tradition or of the subconscious, but it would consider inheritance and environ-

<sup>44</sup>W. Lippmann, *The Phantom Public* (1926); W. B. Munro, *Personality in Politics* (1924).

ment as science unfolds them rather than as privilege or power portrays them. There can be little doubt that we are on the verge of fundamental changes in the study of government, the precise nature of which not even the hardest ventures to forecast."<sup>45</sup>

In recent years there has been a marked increase of interest in the study of government, especially in American universities. Elaborate lists of courses are now offered in every important institution of learning. Agencies of research and investigation, both governmental and private, have multiplied. A voluminous literature, in the form of books and pamphlets, appears annually; and numerous periodicals are devoted, in whole or in part, to the discussion of public questions. Excellent descriptions of the American governmental system, state<sup>46</sup> and national,<sup>47</sup> have appeared; and histories of the United States,<sup>48</sup> written from the newer point of view, have given a better perspective on our national development. Attention has also been given to the general theory of the state<sup>49</sup> and to the historical development of political philosophy, both in the United States<sup>50</sup> and in other countries.<sup>51</sup> While the United

<sup>45</sup> C. E. Merriam, "Recent Development in Political Science," in E. C. Hayes, ed., *Recent Developments in the Social Sciences* (1927).

<sup>46</sup> A. N. Holcombe, *State Government in the United States* (1916); W. F. Dodd, *State Government* (1922); J. M. Mathews, *Principles of American State Administration* (1917); E. Kimball, *State and Municipal Government in the United States* (1920).

<sup>47</sup> F. A. Ogg and P. O. Ray, *Introduction to American Government* (rev. ed., 1928); E. Kimball, *National Government of the United States* (1920); C. A. Beard, *American Government and Politics*, (rev. ed., 1928); W. B. Munro, *The Government of the United States* (rev. ed., 1925); J. T. Young, *The New American Government and Its Work* (1923); C. E. Martin and W. H. George, *American Government and Citizenship* (1927).

<sup>48</sup> D. S. Muzzey, *United States of America* (2 vols., 1922, 1924); H. C. Hockett and A. M. Schlesinger, *Political and Social History of the United States* (2 vols., 1926-1927); C. A. Beard and M. R. Beard, *Rise of American Civilization* (2 vols., 1927).

<sup>49</sup> J. W. Garner, *Introduction to Political Science* (1910); R. G. Gettell, *Introduction to Political Science* (rev. ed., 1922); W. W. Willoughby, *Fundamental Concepts of Public Law* (1924); W. W. Willoughby and L. Rogers, *Introduction to the Problem of Government* (1921); C. H. Haines and B. M. Haines, *Principles and Problems of Government* (rev. ed., 1926); J. Q. Dealey, *The State and Government* (1921); A. N. Holcombe, *Foundations of the Modern Commonwealth* (1923).

<sup>50</sup> C. E. Merriam, *American Political Theories* (1903); *American Political Ideas, 1865-1917* (1920); A. B. Hart, *National Ideals Historically Traced* (1907); E. D. Adams, *The Power of Ideals in American History* (1923).

<sup>51</sup> W. A. Dunning, *Political Theories* (3 vols., 1905, 1920); C. E. Merriam and H. E. Barnes, eds., *Political Theories, Recent Times* (1924); W. W. Willoughby, *Political Theories of the Ancient World* (1903); R. G. Gettell, *History of Political Thought* (1924); F. W. Coker, *Readings in Political Philosophy* (1914); G. L. Scherger, *Evolution of Modern Liberty* (1904); F. W. Coker, *Organismic Theories of the State* (1910); C. E. Merriam, *History of the Theory of Sovereignty Since Rousseau* (1900).

States in the past has been so occupied with the urgent tasks of territorial settlement and expansion, of economic development and of race assimilation, that it has had little time to work out a comprehensive philosophy of politics, there are many indications that the time is now ready for America to think out its democracy, and to base its policies, both domestic and foreign, on intelligent political thought.

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# INDEX

- "A. B. C. powers," 503
- Ableman v. Booth, 304
- Absent voting, 486
- Adams, C. F., 343, 367
- Adams, H. B., 609
- Adams, J., 8, 13, 63, 76, 78, 81, 82, 84, 86, 92, 93, 98, 107, 114, 117, 120, 129, 134, 140, 144, 155; political theory of, 161-164, 173, 177, 178, 179, 180, 182, 190, 241, 254, 264
- Adams, J. Q., 187, 233, 234, 256, 258, 285, 318, 322, 327
- Adams, S., 8, 64, 77, 81, 82, 89, 96, 99, 106, 121, 130
- Adamson Act, 424, 488
- Administrative boards, 542
- Administrative control over cities, 600-601
- Administrative law, 553
- "*Agreement of the People*," 49
- Alabama Claims, 19
- Alaman, L., 314
- Alaska, purchase of, 374
- Albany Plan of Union, 105
- Aldrich-Vreeland Act, 458
- Alien and Sedition Acts, 18, 155, 180-181
- Amana Society, 576
- Amendment, of constitutions, difficulty of, 565-566
- American Anti-Slavery Society, 279, 280
- American Colonization Society, 278
- American Federation of Labor, 415, 539, 581
- American history, recent tendencies in, 610-611
- American Insurance Co. v. Canter, 211
- American Legion, 472
- American Peace Society, 528
- American Revolution, 67; nature of, 76-82; political theory of, 82-99
- "*American System*," 217-248
- Ames, F., 144, 155, 179, 185
- Amnesty Proclamation, 380
- Anabaptists, 41
- Anarchism, 584-586
- Andrews, S. P., 585
- Anglo-Japanese Alliance, 517, 526
- Anthropology, influence of, on political thought, 611
- Anti-democratic theories, 14-15; of Puritans, 56-57, 547-549
- Anti-Federalists, 130, 132, 150
- Anti-imperialist League, 451
- Anti-Masonic Party, 248, 251
- Antinomians, 584
- Anti-war theories, 529-533
- Arbitration, 531
- Aristocracy, of Federalists, 143-144; of J. Adams, 161-162; of Hamilton, 190-191; of Jefferson, 190; of Southern planters, 284; recent theory of, 549
- Arthur, C. A., 531
- Articles of Confederation, 107; defects of, 107-109, 115, 119, 169
- Austin, J., 21
- Australia, 22
- Australian ballot, 22, 485
- Bacon's Rebellion, 66
- Bekunin, M., 22
- Baldwin, H., 260
- Ballinger-Pinchot controversy, 462
- Ballot, in American colonies, 63; forms of, 485-486
- Bancroft, G., 323
- Barbary pirates, 116, 231
- Barlow, J., 98, 195
- "*Barnburners*," 343
- Barnes, H. E., 610
- Bassett, J. S., cited, 159
- Beard, C. A., cited, 190, 610
- Beecher, H. W., 352, 369, 415
- Bellamy, E., 583, 592
- Bentham, J., 21
- Benton, T. H., 9, 252, 258, 268, 313, 315, 321
- Berger, V., 582
- Bergson, C., 22
- Bering Sea Controversy, 442-443
- Berkeley, Gov., cited, 53
- Biddle, N., 268
- Bill-drafting bureaus, 551
- Bill of Rights, in England, 38; in early state constitutions, 101; in federal Constitution, 122, 142-143; *The Federalist* on, 138-139
- Bingham, H., 506
- Biology, influence of, on political thought, 611-612

- Biological arguments against war, 529  
 Birkbeck, M., 220  
 Black, J. S., 349-350  
 "Black Codes," 381, 391  
 Blackstone, Sir W., 21, 74, 93, 166, 204, 212  
 Blaine, J. G., 9, 431, 435, 444, 445, 448, 508  
 Blatchford, Justice, cited, 561  
 Bliss, P., 293  
 Blockade, in Civil War, 368-369  
 "Bloody shirt," 432  
 Bluntschli, J. K., 399, 403  
 Board of Censors, 73, 100, 206  
 Board of Commissioners for Trade and Plantations, 59, 67  
 Bodin, J., 27, 46  
 Bolingbroke, Viscount, 148  
 Bolivar, S., 236  
 Boucher, J., 97  
 Boxer Revolt, 511  
 Bright, J., 369  
 Brisbane, A., 577  
 Brook Farm, 243, 578  
 Brown, C. B., 538  
 Brown, J., raid of, 340  
 Brownson, O. A., 398  
 Bryan, W. J., 9, 439, 451, 457, 460, 469, 479, 487, 490, 497, 512, 519, 531  
 Bryce, J., 21, 431  
 Buchanan, J., 295-319, 326, 349, 350, 351, 371  
 Buckle, H. T., 614  
 Bunting v. Oregon, 564  
 Burlingame Treaty, 510  
 Burgess, J. W., 311, 387; political theory of, 402-404, 408, 530, 570, 574, 592, 609, 618  
 Burke, E., 64, 73-74, 85, 93, 149  
 Burr, A., 8, 192  
 Burritt, E., 528  
 Butler, N. M., 570  
  
 Cabet, E., 575, 579  
 Cabinet, beginnings of, 142; relation to Congress, 16, 554-555  
 Calderon, G. C., cited, 508  
 Calhoun, J. C., 9, 189, 214, 215, 217, 218, 220, 221, 230, 245, 252, 256, 258, 267, 282, 283, 284, 287, 289; political theory of, 300-303, 306-308, 318, 322, 393, 407, 408, 479  
 "Calker's Club," 273  
 Calvin, J., 46-47, 53  
 Calvo Doctrine, 504  
 Campaign finances, 489-491  
 Canada, 22, 313, 314, 316-317, 372-373  
 Canal tolls, 502  
 Canning, D., 234, 235  
 Cannon, J. G., 436, 461  
 Carlisle, J. G., 435  
 "Carpetbaggers," 386  
 Cass, L., 288, 333  
 Catholic Church, adjustment with, after Revolution, 116-117  
 Caucus, 249-250, 273  
 Channing, W. E., 244, 275, 281  
 Chartered companies, 32-34  
 Charters, of colonies, 33-35; of colonial boroughs, 595; of cities, 595-600  
 Chase, S. P., 9, 150, 208, 332  
 Checks and balances, 103; J. Adams on, 163, 553-554  
 Cheyney, E. P., cited, 26, 42  
 Child Labor Act, 424, 564  
 China, relations with the United States, 509-513  
 Chinese immigration, 447, 510  
 Chipman, N., 292  
 Chisholm v. Georgia, 143, 167  
 Church and State, in American colonies, 52-58; during Revolutionary period, 80; at close of Revolution, 116-117; separation of, 243-244  
 Church of England, in American colonies, 53, 78; adjustment with, after Revolution, 117  
 Cities, growth of, 590-594; relation to state, 594-601; types of government in, 601-607  
 Citizenship, 335-336; of Japanese in the United States, 516; under the Fourteenth Amendment, 392-394  
 City Manager, 23, 604-606  
 Civil Rights Bill, 392  
 Civil service reform, 432-433, 483-485, 541  
 Clark, C., 465  
 Clay, H., 9, 214-215, 217, 223, 230, 233, 237, 246, 249, 255, 256, 257, 268, 288, 289, 320, 434  
 Clayton Act, 424  
 Clayton-Bulwer Treaty, 326, 444, 500  
 Clergy, influence of, 11, 54  
 Cleveland, G., 438, 445, 446, 451, 494, 531  
 Cobbett, W., 181  
 Cobden, R., 373  
 Codification, of law, 557  
 Coke, Sir E., 21, 48, 55, 205  
 Colby, B., 490, 525  
 Colombia, relations with, over Panama Canal, 500-502  
 Colonial assembly, 61, 66-67  
 Colonial governor, 59-60, 66-67  
 Colonial political institutions, 58-67  
 Colonial wars, 30  
 "Come outers," 280, 584



- Commission government, in cities, 602-604  
 Committees of Correspondence, 64, 99-100, 106  
 Committee on Public Information, 527  
 Committee on Rules, 436  
 Committee on Secret Correspondence, 113  
 Common law, 557  
 Compromises, in the Constitution, 123-128  
 Compulsory voting, 487  
 Comte, A., 399  
 "Concurrent majority," of Calhoun, 301  
 Condorcet, Marquis de, 161  
 Confederate Constitution, 554  
 Confederate States, secession of, 353-354; constitution of, 354-355; governmental policy of, 356-357  
 Confiscation Acts, 389  
 Congregationalism, 52, 57  
 Congress, decline in powers of, 253-259; power of, over territories, 332-339; reconstruction policy of, 376-388; power of, over dependencies, 498-500; relation to President, 549-555  
 Conkling, R., 9  
 Connecticut Compromise, 125  
 "Conscience Whigs," 343  
 Conservation, 459, 573  
 Conservative political thought, 5-6, 10  
 Constitution, creation of, 119-129; ratification of, 129-134; political theory of, 134-140; legal supremacy of, 206-212; of states, 550; interpretation of, 556-557; difficulty of amendment of, 565-566  
 Constitutional Convention, of 1787, 123-129  
 "Continuous Voyage," 368  
 Cooley, T. M., 292, 363  
 Coolidge, C., 475, 476-477, 478, 506, 508  
 Cooper, J. F., 321  
 "Copperheads," 346  
 Corporations, growth of, 415; regulation of, 421-426  
 Corrupt Practice Acts, 489-490  
 Cotton, J., 55-56, 59  
 Cotton Futures Acts, 424  
 "Cotton Whigs," 343  
 Council of Revision, 206  
 Cox, J. M., 474  
 Cram, R. A., 548  
 "Credit Mobilier," 550  
 Creel, G., 527  
 "Crime of 1873," 430  
 Critical political thought, 6-7, 10  
 Crittenden Compromise, 351  
 Crowd psychology, 548  
 Cuba, 327-328, 494-495, 498  
 Curtis, G. W., 484  
 Cushing, C., 317  
 Dana, R. H., 343  
 Dane, N., 292  
 Danish West Indies, 503  
 Dartmouth College, *v.* Woodward, 210  
 Darwin, C., 21  
 Davis, J., 9, 303, 338, 340, 341, 347, 355-356, 370, 390, 477  
 Dawes, C. G., 477  
 "Dawes Report," 526  
 Debs, E. V., 452, 582, 583  
 Debts, of Europe to the United States, 20, 477-478, 526  
 Declaration of Paris, 325  
 Declaration of the Causes and Necessity of Taking up Arms, 79  
 Declaration of Independence, 90, 96, 107, 112  
 De Leon, D., 581, 587  
 De Maistre, 399  
 Democracy, 14-15; of Puritans, 57; in colonial period, 64-69; during American Revolution, 80; *The Federalist* on, 135-137; J. Adams on, 161-162; J. Wilson on, 165; Hamilton on, 170-171; of Democratic-Republicans, 189-191; of Jefferson, 198-200; in Jacksonian period, 239-247; and expansion, 314-315  
 Democratic Party, 224, 246-248; split of, before Civil War, 346; theory of, in 1860, 347-348; after Civil War, 429-441  
 Democratic-Republican Party, 134, 151-153, 184; policies of, 187-194; political theory of, 194-204; foreign policy of, 224-237  
 Department of Commerce and Labor, 455  
 Department of State, 172  
 De Tocqueville, A., 212, 242, 292, 479, 559, 592, 599  
 Dewey, J., 617  
 Dickinson, J., 82, 106, 122, 138, 151, 206  
 Dillon, J. F., 594  
 Dingley Tariff Act, 425  
 Direct primary, 487-488; federal regulation of, 489-490, 545  
 Divided sovereignty, 139-140; J. Adams on, 164; Madison on, 203, 291-295, 302, 400  
 Divine Right, 36, 46  
 Dodd, W. E., 610  
 Dodge, D. L., 528  
 "Dollar diplomacy," 20, 507-508  
 Dominican Republic, 503

- Dorr's Rebellion, 241  
 Douglas, S. A., 9, 288, 324, 333, 334;  
     debate with Lincoln, 337-339, 346,  
     358, 359  
 Drago Doctrine, 504  
 Drayton, W., 96  
 Dred Scott Case, 263, 335-336, 337,  
     338, 341, 346  
 Duane, W. J., 8  
 Dubois, W. E. B., 537  
 "Due process of law," 374-395  
 Dunning, W. A., cited, 350-351, 387,  
     609  
 Dwight, T., 98, 182, 219  
  
 Eaton, D. B., 484  
 Economic arguments against war, 529-  
     530  
 Educational qualifications, for voting,  
     540-541  
 Eighteenth Amendment, 410, 473  
 Electoral College, 13, 127, 193-194  
 Electorate, 14; composition of, 536-  
     548; powers of, 541-549  
 Eleventh Amendment, 143  
 Elkins Act, 455  
 Ellsworth, O., 159  
 Emancipation Proclamation, 361, 390  
 Emerson, R. W., 243, 280  
 Emigrant Aid Society, 335  
 Employes' Liability Act, 424, 458  
 Enforcement Acts, 395  
 England, influence of, on American  
     political thought, 21-22, 25; con-  
     test with France for America, 29-  
     31; political conditions in sixteenth  
     and seventeenth centuries, 35-38;  
     religious conditions in seventeenth  
     century, 38-42; in American Revolu-  
     tion, 114-115; relations with, in  
     Federalist period, 173-176, 177; in  
     Napoleonic Wars, 228-230, 231; in  
     Jacksonian period, 324-327; in Civil  
     War, 368-370, 372-373; from 1877-  
     1897, 442-444; over Panama Canal,  
     500-502; in World War, 518-519  
 "Era of Good Feeling," 187  
 European background of American  
     political thought, 25-50  
 Everett, E., 327  
 Executive, relation to legislature, 549-  
     555  
*Ex parte Milligan*, 362  
 Expansion, 313-321, 373-374, 495-509  
 Extraterritorial rights, 510  
  
 Fabians, 22  
 Farewell Address, of Washington, 18,  
     116, 155, 178, 236  
 "Farm bloc," 471  
 Farmers' Alliances, 437  
 "Farmers' Declaration of Indepen-  
     dence," 419  
 Farmers' Educational and Coöperative  
     Union, 471  
*Farmers' Letters, The*, 154  
 Farm Loan Act, 467  
 Federal Child Labor Tax, 424  
 Federal Income Tax, 426, 439  
*Federalist, The*, 133, 134-139, 143,  
     172, 207, 256, 291, 292  
 Federalists, 132; aristocracy of, 143-  
     144; political theory of, 160-172;  
     foreign policy under, 172-179;  
     downfall of, 179-185  
 "Federal ratio," 126  
 Federal Reserve System, 458, 467  
 Federal Trade Commission, 424, 467  
 Fenian Movement, 372  
 Fichte, J., 399  
 Field, Justice, cited, 563  
 Fifteenth Amendment, 395  
 Filmer, Sir R., 47, 48, 96  
 First Continental Congress, 79, 86,  
     105  
 First Report on the Public Credit, 145  
 Fish, H., 448  
 Fletcher v. Peck, 210  
 Flint, T., 221  
 Florida, acquisition of, 227  
 Fombona, B., cited, 324  
 Foreign policy, general tendencies in,  
     17-21; beginnings of, 112-117; of  
     Federalists, 172-179; of Democratic-  
     Republicans, 224-237; of Demo-  
     cratic period, 321-330; during Civil  
     War, 367-375; from 1877-1897,  
     441-449; after 1898, 483-534  
 Fourier, C., 575, 577  
 Four-Power Pact, 517, 526  
 "Fourteen Points," 522  
 Fourteenth Amendment, 385, 386, 387,  
     392-395, 538, 560, 561  
 France, influence of, on American  
     political thought, 22; contest with  
     England for America, 29-31; popu-  
     larity of, in America, 81-82; in  
     American Revolution, 113-114; dur-  
     ing French Revolution, 173-178;  
     influence of, on Jefferson, 196;  
     cedes Louisiana to United States,  
     225-226; in Civil War period, 370-  
     372  
 Franklin, B., 22, 66, 73, 81, 84, 85,  
     105, 113, 116, 132, 149, 164, 628  
 Freedmens' Bureau, 384, 391, 392  
 Freedom of Speech, in World War,  
     527  
 Freeport Doctrine, 338  
 Free Silver, 9, 420, 430  
 Free Soil Party, 288, 343-344  
*Freiheit, Die*, 582

- French Revolution, influence of, on American foreign policy, 173-179  
 French Spoliation Claims, 178  
 Freneau, P., 8, 154  
 Freund, E., 565, 575  
 Frontier, influence of, 218-229  
 Fugitive-slave law, 9, 160, 281, 290  
 Fundamental Articles of New Haven, 55  
 Fundamental Constitutions of East Jersey, 72  
 Fundamental Constitutions, of Carolina, 72  
 Fundamental Orders of Connecticut, 54  
 "Futility Men," 344
- Gallatin, A., 181, 188  
 Garfield, J. A., 382  
 Garrison, W. L., 9, 243, 278, 429, 585  
 Genêt, 174  
 "Gentleman's Agreement," 514  
 Gerry, E., 121, 130, 206  
 Geography, influence of, on political thought, 613-614  
 George III, 31, 64, 77  
 George, H., 420, 592  
 Germany, influence of, on American political thought, 22-23; relations with United States during World War, 518-523  
 Gibbons v. Ogden, 211, 407  
 Giddings, J., 9, 343  
 Gladstone, W. E., 369  
 Godkin, E. L., 383, 441, 484, 548  
 Godwin, P., 577  
 Goldman, E., 586  
 Goodnow, F. J., 554, 565, 575, 599  
 Government functions, theories of, 568-589  
 Government regulation, theory of, 57-575  
 Governor, early powers of, 100; increased powers of, 257-258, 552  
 Governor's Council, 60  
 "Grandfather clause," 537  
*Grand Remonstrance*, 38  
 Granger Cases, 419  
 Granger Movement, 415, 419-420  
 Grant, M., 530  
 Grant, U. S., 386, 395, 432  
 Gray, G., cited, 496  
 Greeley, H., 19, 276, 318, 334, 352, 358, 428, 577  
 Green, T. H., 616  
 Greenback Labor Party, 430  
 Greenback Party, 420, 428-429  
 Grotius, H., 27, 47, 74, 88  
 Guild Socialists, 22, 589
- Habeas corpus, suspension of, by Lincoln, 360, 362  
 Hague Conferences, 374, 504, 531  
 Haiti, 503  
 "Half-breeds," 431  
 Haller, L. von, 399  
 Hamilton, A., 8, 82, 84, 89, 111, 121, 122, 123, 125, 132, 134, 135, 138, 142, 143; financial policies of, 144-148, 151; political theory of, 168-172, 173, 174, 177, 179, 180, 185, 195, 207, 231-232, 256, 259, 384, 455  
*Harbinger, The*, 578  
 Harding, W. G., 474, 475, 476  
 Harlan, Justice, 423, 426  
 Harrington, J., 21, 48-49, 63, 67, 71-73, 88, 210, 254  
 Harrison, B., 130, 434  
 Harrison, F. B., 497  
 Hartford Convention, 7, 183-184, 231, 264, 296  
 Hartford Wits, 121  
 Harvey, G., 465  
 Hanna, M., 9, 440, 456  
 Hawaiian Islands, 448-449  
 Hay-Bunuan-Varilla Treaty, 501  
 Hayes, R. B., 429, 433, 510  
 Hay, J., 496, 510, 511  
 Haymarket Massacre, 582  
 Hayne, R. Y., 297-298  
 Hay-Pauncefote Treaty, 500  
 Haywood, W. H., 587  
 Hearst, W. R., 457, 495  
 Hegel, G. W. F., 22, 399, 403  
 Helper, H. R., 339-340  
 "Helvidius," 175  
 Henry, P., 8, 82, 121, 127, 130, 150  
 Henry, Prince of Prussia, 109  
 Hepburn Act, 458  
 Hill, D. J., 570  
 Hillquit, M., 583  
 Hoar, G. F., 497  
 Hobbes, T., 48, 168  
 Hockett, H. C., cited, 219  
 Holmes, Justice O. W., Jr., 410, 558, 562, 565  
 Holst, E. von, 417  
 Holy Alliance, 233-234  
 Hooker, R., 48  
 Hooker, T., 57-58, 67, 68, 70, 88  
 Hoover, H., 474  
 House, E. M., 518  
 Howe, F. C., cited, 599  
 Hughes, C. E., 9, 469, 478, 487, 507, 516, 525  
 Humanists, 43  
 "Hunkers," 343  
 Hurd, J. C., 398, 400  
 Huss, J., 44  
 Hutchinson, T., 97

- Immigration, 15, 19; Jefferson on, 200, 240, 263-265, 414-415, 473; of Chinese, 510; of Japanese, 514-515  
 Impeachment, of Johnson, 388  
 Imperial Federation, 85  
 Imperialism, of Hamilton, 170; of Marshall, 212; after Spanish War, 451-452, 495-509  
 Implied powers, 148, 169, 172, 211  
 Income tax, 572  
 Income Tax Case, 562  
 Incorporated territory, 499  
 Indentured servants, 35  
 Independence, growth of idea of, 94-95  
 Independents, 39-40  
 Individualism, 12; of American Revolution, 92; decline of, 305-306; Woolsey on, 402; decline of, 468, 563-565; theories of, 568-571.  
 Industrial Revolution in America, 265, 266  
 Industrial Workers of the World, 472, 586-588  
 Inheritance tax, 572  
 Initiative, 545-546  
 "Instructions for the Government of the Armies of the United States in the Field," 374  
 Insular Cases, 498-500  
 Internal improvements, 220-221  
 "International, The," 580  
 International administrative unions, 532  
 Internationalism, theories of, 532-534  
 Interparliamentary Union, 531  
 Interstate Commerce Act, 422  
 Interstate Commerce Commission, 458  
*Instrument of Government*, 50  
 Insular cases, 20, 498-500  
 Irish, in America, 264-265, 325, 372  
 Irving, W., 321  
 Ishii, Viscount, 513  
 Isolation, theory of, 18-19, 178-179, 330; disappearance of, 493-494, 614  
 Italy, influence of, on American political thought, 22  
  
 Jackson, A., 9, 187, 239, 240, 247, 251, 253, 254, 255, 261, 268, 287, 298-299, 300, 483  
 James I., 36-37, 48, 96  
 James, W., 617  
 Jameson, J. A., 398  
 Jameson, J. F., 610  
 Japanese immigration, 514-515  
 Japan, relation to China, 512-513; relations with United States, 513-517  
 Jay, J., 8, 109, 115, 121, 132, 176, 207  
 Jay's Treaty, 176-177  
 Jay, W., 531  
 Jefferson, T., 8, 22, 82, 103, 107, 113, 135, 142, 144, 147, 151, 152, 157, 173, 179, 180, 187, 191; political theory of, 195-201, 209, 222; foreign policy of, 224-229, 234, 243, 254, 264, 313, 327, 345, 591  
 Johnson, A., 267, 373, 380, 381, 382, 387  
 Johnson, H., 9, 475  
 Johnston, A., cited 296  
 Judges, method of selection, 555; recall of, 556  
 Judicial procedure, reform of, 558-559  
 Judicial review, in early state constitutions, 101; J. Wilson on, 167-168; Jefferson on, 200; by Supreme Court, 204-212; Lincoln on, 364-365; recent theory of, 560-562  
 Judiciary Act, 142, 207  
 Judiciary, in colonial period, 61; *The Federalist* on, 138; Jefferson on, 200; organization of, 555; powers of, 555-556  
 Jurisprudence, recent changes in, 610  
 Jury system, 559  
 Kansas Court of Industrial Relations, 564  
 Kansas-Nebraska Bill, 333-335  
 Kelly, E., 583  
 Kent, Chancellor, 241  
 Kent, J., 135  
 Kentucky and Virginia Resolutions, 7, 155-157, 171, 181, 208, 218, 295  
 Kentucky v. Dennison, 260  
 King, R., 185  
 Knights of Labor, 581  
 Know-Nothing Party, 265, 345  
 Knox, H., 142  
 Kropotkin, Prince, 22  
 Ku Klux Klan, 395, 472  
 Labor legislation, 275-276, 563-564, 572  
 Labor Reform Party, 428  
 Labor Unions, 22, 240, 273-276, 573  
 Ladd, W., 524, 528, 531  
 LaFollette, R. M., 9, 453, 460, 462-463, 477, 487, 520, 566  
 La Follette Seamen's Act, 468  
 Land grants, for railways, 272  
 Law, early American interest in, 73-74; codification of, 557; recent changes in, 610  
 Lawyers, importance of, in colonial period, 73-74; in American Revolution, 81; in recent times, 559  
 League of Nations, 10, 20, 507, 515, 520, 523-525  
 Lecompton Constitution, 336

- Lee, R. H., 150, 294, 538  
 Legislation, increase of, 550-551  
 Legislative Reference Bureaus, 551  
 Legislature, *The Federalist* on, 138;  
     relation to executive, 549-555  
 Leonard, D., 97  
 Liberia, 278  
 Liberty Party, 248-249, 342  
 Lieber, F., 22, 245; political theory of,  
     309-311, 374, 399, 401, 570, 609  
 Lincoln, A., 9, 179, 282, 323; debate  
     with Douglas, 337-339, 341, 347, 348,  
     352, 357-358; war policy of, 359-  
     362, 364; reconstruction policy of,  
     365, 367, 377-378, 379, 380, 389, 398  
 Literature, influence of, on political  
     thought, 23  
 Livingstone, R., 105  
 Loans, to China, 511-512; to Europe,  
     20, 477-478, 526  
 Local government, in American colo-  
     nies, 38, 61-62; Jefferson on, 199-  
     200  
 Lochner v. New York, 562  
 Locke, J., 21, 48, 49, 67, 70, 74, 82,  
     88, 91, 98, 102, 140, 569  
 "Locofocos," 274  
 Lodge, H. C., 135, 145, 522, 524, 570  
 London, M., 470  
*Looking Backward*, 583  
 Louisiana, acquisition of, 225-226  
 Lowell, A. L., cited, 480, 524, 606,  
     610, 617  
 Lowell, J. R., 243, 290  
 Loyalists, 78, 80; political theory of,  
     96-98, 105  
 Lundy, B., 278  
 Luther, M., 47  
 "Lynch law," 537  
  
 MacDonald, W., 555  
 Machiavelli, N., 29, 45  
 Madison, J., 8, 103, 107, 109, 121, 124,  
     128, 132, 136, 144, 151, 154, 164,  
     175, 187, 188, 189; political theory  
     of, 201-203, 209, 216, 220, 227, 230,  
     232, 234, 243, 264, 292, 294, 295,  
     384, 595  
 Magdalena Bay, 514  
 Magna Charta, 38, 67  
 Mahan, A. T., 534  
 Mails, use of, in slavery controversy,  
     86-287  
 Maine, Sir H., 399  
 Manchester School, 563  
 Mann, H., 275  
 Marbury v. Madison, 208  
 Marcy, W. L., 329  
 Marshall, J., 122, 148, 165, 187, 207;  
     constitutional decisions of, 208-212,  
     259, 294, 407  
 Marsiglio, 44  
 Martial law, in Civil War, 362-363  
 Martin, L., 125, 150, 206  
 Martin v. Hunter's Lessee, 210  
 Marx, K., 22, 579, 580, 581  
 Marxian Socialism, in America, 579-  
     584  
 Mason, G., 204, 294  
 Massachusetts Bay Company, 33-34  
 Massachusetts Body of Liberties, 55  
 Mather, C., 58  
 Mather, R., 70  
 Mayflower Compact, 54, 69-70  
 Mazzini, J., 22  
 McCulloch v. Maryland, 211  
 McKinley, W., 9, 426, 433, 440, 452-  
     454, 495, 496  
 McKinley Tariff Act, 425  
 McNary-Haugen Bill, 471  
 Meat Inspection Act, 458  
*Mechanics' Free Press*, 274  
 Mennonites, 41, 527  
 Mercantilism, 26, 31-32  
 Merchant marine, 18-19, 271  
 Merriam, C. E., cited, 14, 574  
 Mexico, 321-324, 370-372, 478  
 Militarism, theories of, 533-534  
 Mill, J. S., 21, 569, 600  
 Milton, J., 48, 67, 88  
 Minnesota Rate Case, 561  
 Miranda, 232  
 Mississippi River, navigation of, 155,  
     224-225  
 Missouri Compromise, 223, 288, 332,  
     333, 336  
 Monroe, J., 109, 177, 181, 216, 233,  
     234  
 Monroe Doctrine, 18, 20, 235-237,  
     324, 328, 329, 330, 370, 372, 445-  
     556, 493, 503, 504, 506-509, 519,  
     614  
 Montesquieu, C., 22, 102, 39  
 More, T., 575  
 Moreno, L. M., cited, 509  
 Morrill Tariff Act, 271  
 Morris, G., 124, 238, 140, 159  
 Most, J., 586  
 "Muck-rakers," 9, 453, 454  
 Mulford, E., 398, 400  
 Municipal government, in colonial  
     period, 62; in recent times, 590-607  
 Municipal home rule, demand for, 594,  
     601  
 Mussolini, B., 22  
 Muzzey, D. S., cited, 182, 367, 387  
  
 Nashoba Community, 577  
 Nast, T., 441  
 National Bank, 147-148, 267-269  
 National Civil Service Reform League,  
     430

- National Convention, 250-251  
 Nationalism, 16; of J. Wilson, 165; of Hamilton, 169-172; of Federalists, 183-184; of Democratic-Republicans, 184, 189, 213-215; of Jacksonian period, 304-306; of Lieber, 310-311; of Lincoln, 359; effect of Civil War on, 363-367; after Civil War, 397-411; Woolsey on, 402; Burgess on, 402-404; recent growth of, 410-411  
 National Publicity Law Organization, 489  
 National Republicans, 246  
 National Union Party, 427  
 Native American Association, 264  
 "Natural aristocracy," 123; of J. Adams, 162; of Jefferson, 199, 253, 481  
 Naturalization, 329  
 Natural law, 67-68, 74, 88-89, 204-205, 560  
 Natural rights, 89-91, 283, 309-310  
 Navigation Acts, 32, 76, 77  
 Negro, status of, after Civil War, 391-396; suffrage of, 395, 536-537  
 Neutrality Proclamation, of Washington, 236  
 Newberry Case, 489  
 New England Confederation, 104  
 New England Non-Resistance Society, 280  
 "New Freedom," of W. Wilson, 465  
 New Harmony, 576  
 New Jersey Plan, 124  
 "New Nationalism," of Roosevelt, 462, 564  
 New York City, 595  
 New York Publicity Law Organization, 489  
 Nicaragua, 478  
 Nineteenth Amendment, 410, 539  
 Nominations, methods of, 487; popular control of, 544-545  
 Non-Partisan League, 471  
 Nordau, M., 592  
 Northwest Ordinance, 223, 499  
 Nullification, 298, 302  
  
 Odell, J., 95  
 Olney, R., 20, 445-446, 500, 506  
 "Omnibus Bill," 289-290  
 "Open Door," 509, 510  
 Order of the Star Spangled Banner, 265  
 Ordinance of 1787, 110, 126, 160, 224  
 Oregon, 318-319  
 Organic theory, 401  
 Ostend Manifesto, 328  
 Ostrogorski, M., 609  
  
 Otis, J., 8, 77, 82, 85, 88, 121, 205  
 Owen, R., 243, 575, 576  
  
 "Pacifcus," 175  
 Pacifism, theories of, 527-531  
 Page, W. H., 518  
 Paine, T., 8, 82, 89, 90, 93, 94, 95, 103, 155, 164, 166, 194  
 Panama Canal, 19, 443-444, 500-502  
 Panama, relations with, over Canal, 501-502  
 Pan-Americanism, of Clay, 234; of Blaine, 445, 503-505, 508  
 Pan American Union, 445, 508  
 Parker, A. B., 457  
 Parliament, contest with King in England, 35-37; powers of, in American colonies, 83-87  
 Parsons, A. R., 586  
 Party Platform, 251-252  
 Payne-Aldrich Tariff Act, 461  
 Peace Conference, at Paris, 20  
 Peace of 1783, 110  
 Pendleton Act, 484  
 Penn, W., 41, 67-68, 104, 527  
 Pennsylvania, 41-42  
 Petition of Right, 38  
 Philippines, 496-498  
 Phillips, W., 9, 358, 360, 385, 429  
 Philosophy, influence of, on political thought, 616-617  
 Physiocrats, 22, 66  
 Pierce, F., 290, 324, 328, 335, 336  
 Pitt, W., 30, 85, 149  
 Pittsburgh Proclamation, 582, 586  
 Platt, T. C., 452, 497  
 Platt Amendment, 498  
 Pluralistic sovereignty, 612  
 Police Power, 564, 575  
 Political arguments against war, 530-531  
 Political parties, in colonial period, 63-64; beginnings of, in United States, 148-157; in Jacksonian period, 246-253; formation of, over slavery issue, 341-347; nature of, 479-482; reform of, 482-491  
 "Politiques," 47  
 Polk, J. A., 9, 258, 288, 322, 323, 329  
 Popular sovereignty, in American colonies, 68-69; in early state constitutions, 101; in formation of the Constitution, 140, 294; of Jeffersonian period, 189-191; of Jacksonian period, 239-242  
 Populists, 9, 437-438, 451  
 Pound, R., 558, 565  
 Powell, T. R., 565  
 Pownall, T., 67, 116, 327  
 Pragmatism, 617  
 Preamble, origin of, 73



- Preferential voting, 542-543  
 Preparedness, 533-534  
 Presbyterians, 39-40, 41  
 President, importance of, 13; types of men chosen for, 13; method of selection, 126-127, 193-194, 252; nomination of, 250-251; increased power of, under Jackson, 253-259; Roosevelt's idea of, 454; relation to Congress, 549-555; dismissal power of, 384-385; power of, to sign amendments, 391; W. Wilson's idea of, 466  
 Presidential preference primaries, 488  
 Press, in early American politics, 154-155; freedom of, in Civil War, 362-363; influence of, in world politics, 526-527  
 Proclamation of Neutrality, of Washington, 18  
 Progressive Party, 461-465, 469-470, 539, 566  
 Prohibition Movement, 242  
 Prohibition Party, 432  
 Propaganda, in Civil War, 368-369; in World War, 526-527  
 Property, protection of, by courts, 559-562  
 Proportional representation, 543  
 Proprietary colonies, 34-35, 71-73  
 "Proxings," 63  
 Psychology, influence of, on political thought, 617-619  
 Public utilities, government regulation of, 572  
 "Publius," 132  
 Pufendorf, S., 74, 88  
 Pulitzer, J., 495  
 Pure Food and Drugs Act, 458  
 Puritans, 34, 39-40, 52-58; political theory of, 67-73  
  
 Quakers, 40-41, 53, 158, 159, 244, 527, 528, 584  
 Quincy, J., 184, 213, 296, 366  
 Quorum, in Congress, 435  
  
 Race supremacy, 311, 404, 530  
 Railways, beginnings of, 272; regulation of, 421-422, 571-572  
 Randall, S. J., 435  
 Randolph, E., 122, 123, 130, 142, 147  
 Randolph, J., 213, 215, 227  
 Rappist Community, 576  
 Reagan v. Farmers' Loan and Trust Co., 562  
 Recall, 545, 547; of judges, 547, 566  
 Reconstruction, 365; political theory of, 376-388  
 Reed, T. B., 9, 435  
 Referendum, 546  
 Reformation, influence of, on political thought, 45-46  
 Registration, of voters, 485  
 Religion, influence of, on American Revolution, 78-79  
 Reparations, 526  
 Report on Manufactures, of Hamilton, 147  
 Representation, Colonial theory of, 85-87; in Congress, 125-126  
 Republican government, 103, 136  
 Republican Party, origin of, 345-346; after Civil War, 429-441  
 Revolution, Jefferson on, 198  
 Rhode Island, 34, 42  
 Rhodes, J. F., 388  
 Right of Revolution, 91-92  
 Robinson, J. H., 610  
 Rogers Act, 527  
 Roman law, 44-45  
 Roosevelt, T., 7, 9, 165, 411, 452, 453, 454-456, 458-459, 487, 490, 498, 501, 504, 506, 507, 518, 524, 533, 554, 556, 564, 566  
 Root, E., 459, 502, 505, 515, 570  
 Rotation in office, 92, 191, 254-255  
 "Rule of 1756," 176, 228  
 Rush, B., 95, 107, 122  
 Rush-Bagot Agreement, 325  
 Russia, influence of, on American political thought, 22  
  
 Sabotage, 587  
 Sage, B. J., 303  
 Samoan Islands, 447  
 Savigny, F. K., 399  
 Schäffle, A., 400  
 Schlesinger, A. M., 610  
 Schurz, C., 386, 484  
 Scotch-Irish, 41, 78  
 Seabury, S., 96  
 Sea Power, 534  
 Secession, theory of, 295-296, 347-357  
 Second Continental Congress, 79, 99, 106, 107  
 Second National Bank, 214  
 Second Report on the Public Credit, 147  
 Sectionalism, beginnings of, 217-224  
 Selden, J., 48  
 "Self-determination of nations," 521  
 Senate, treaty power of, 175  
 Senators, popular election of, 544  
 Separation of powers, 15-16, 92, 137; Hamilton on, 169; in early state Constitutions, 102-103, 553-554, 606  
 Separatists, 39-40  
 Seventeenth Amendment, 544  
 Seward, W. H., 9, 320, 332, 335, 348, 350, 358, 367, 370, 371, 373  
 Shaler, N. S., 614

- Shaw, G. B., 22  
 Shays's Rebellion, 66  
 Sherman, J., 388  
 Sherman Anti-Trust Law, 423, 455, 467, 562  
 Sherman, R., 135  
 Shipping subsidy, 271  
 Short Ballot, 541  
 Sidney, A., 21, 48, 67, 88  
 Single tax, 420-421  
 Sixteenth Amendment, 410, 467  
 Slaughter House Cases, 560-561  
 Slavery, beginnings of controversy over, 157-160; territorial expansion and, 221-224; political theory of, 278-285; Congressional policy of, 285-291; final controversy over, 332-347, 391  
 Slavery petitions, 160, 285-286  
 Slave trade, 126, 158-159  
 Small, A. W., cited, 293  
 Smith, A., 21, 569  
 Smith, S., 214  
 Smyth v. Ames, 562  
 Social Contract, 48, 57; in colonial political thought, 69-71; in theory of American Revolution, 89-90; Jefferson on, 197; Madison on, 202, 245, 300, 307-308, 309, 401  
 "Social Darwinism," 533  
 Social Democratic Working-Men's Party, 581  
 Socialists, 460; recent attitude of, 470-471; theories of, 575-584  
 Social legislation, 563-564, 573  
 Socialist Labor Party, 581  
 Socialist Party, 582  
 Socialist Trade and Labor Alliance, 581  
 Society of Cincinnati, 81  
 Sociology, influence of, on political thought, 612-613  
 Sociological jurisprudence, 558, 565, 612-613  
 South Carolina, tariff controversy in, 217-218; secession of, 349  
 "South Carolina Exposition," 217  
 Sovereignty, J. Wilson on, 167; Hamilton on, 169; Madison on, 202-203; *The Federalist* on, 139-140; theory of, 291-311; Lincoln on, 359; recent theory of, 397-411  
 Spanish Jesuits, 27, 46  
 Spanish War, 20, 494-495  
 Spargo, J., 583  
 Sparks, J., 214  
 Speaker, of House of Representatives, 249, 434-436, 461  
 Special legislation, for cities, 596-597  
 Spencer, H., 21, 400, 563, 569  
 Spheres of Influence, 510  
 Spies, A., 586  
 Spoils system, 191-192, 483  
 Spotswood, Gov., 69  
 "Squatter Sovereignty," 288, 333  
 Stair, Earl of, 105  
 "Stalwarts," 429, 431  
 Stamp Act Congress, 86, 106  
 Stanton, E., 388  
 States, admission of, 222-223, 366  
 States, relation to Union, J. Wilson on, 165-167; Hamilton on, 169; Madison on, 201-202, 291-311, 354-355; after Civil War, 397-411  
 State constitutions, creation of, 100-104  
 States' rights, 7, 16, 143, 217-218, 223-224, 261-262, 295-297, 302-303, 363-364, 376, 405, 406-407  
 Statistics, influence of, on political thought, 615, 616  
 Stephens, A., 9, 303  
 Stevens, J. L., 448  
 Stevens, T., 9, 377, 382, 392  
 Story, J., 241, 245, 260, 299, 363, 393  
 Stone, H. B., 340  
 Suffrage, widening of, 243-244  
 Sumner, C., 9, 332, 343, 344, 367, 373, 374, 376-377, 524, 536  
 Sumner, W. G., 573  
 Supreme Court, creation of, 142; development of powers of, 204-213; decline under Jackson, 259-263; Lincoln on, 364-365; in Civil War period, 385-386; at close of Civil War, 396-397; on divided sovereignty, 400; recent tendencies in, 560-562  
 "Susan B. Anthony Amendment," 539  
 Syndicalism, 22, 586-587  
 Taft, W. H., 459, 460, 464, 465, 507, 511, 524, 531, 570  
 Tallmadge, J., 221  
 Tammany Hall, 192, 251  
 Taney, R., 260, 261, 262, 290, 303-304, 335, 393  
 Tariff, beginnings of, 144-145; in Democratic-Republican period, 215-218; in Jacksonian period, 269-271; after Civil War, 424-425; of Cleveland, 433; of McKinley, 433-434, 440, 453  
 "Tariff of Abominations," 217  
 Taxation, colonial theory of, 85-86  
 Taylor, J., 181, 195; political theory of, 203-204, 254  
 Tenure of Office Act, 384, 388  
 Teutonic peoples, Lieber on, 311; Burgess on, 404

- Texas, 317-318, 322  
 Thayer, J. B., 565  
 Thirteenth Amendment, 391  
 Thoreau, H., 280, 585  
 "Tie Wig School," 185  
 Tilden, S. J., 429  
 Tolstoi, L., 22  
 Tories, in American colonies, 63;  
     political theory of, 96-98  
 Town meeting, 62  
 Transcendentalists, 243, 244  
 Transcendental Club, 578  
 Treaties, method of negotiating, 175  
 Trent Affair, 370  
 Trusts, regulation of, 421-424, 455  
 Tucker, B., 585  
 Tucker, H. St. G., 195, 296  
 Turgot, J., 161  
 Turner, F. J., 610, 614  
 Twelfth Amendment, 193  
 "Twenty-one Demands," 512  
 Two-party system, 481  
  
 Ugarte, M., cited, 324  
 Unconstitutional law, 206-212  
 Underwood Tariff Bill, 467  
 Unincorporated territory, 499  
 Unitarianism, 244  
 Universities, study of government in,  
     620  
 Upshur, A. P., 303  
 Utilitarianism, 12  
 Utopian Socialism, 575-579  
  
 Vollandigham, C. L., 267  
 Van Buren, M., 9, 242, 259, 275  
 Vattel, E., 74, 88  
 Venezuela Controversy, 445-446  
 Veto power, of President, 256-257  
 Vice President, 14, 192-193  
*Vindication of the Rights of Women*,  
     538  
 Virginia Company, 33  
 Virginia Declaration of Rights, 91, 92  
 Virginia Dynasty, 253  
 Virginia Plan, 123  
 Volstead Act, 473  
 Voting, methods of, 485-487  
 Voting machines, 486  
*Voyage en Icarie*, 579  
  
 Wade-Davis Bill, 379, 380  
 Walker, F. A., 293  
 Walker, R. J., 270  
 Walker Commission, 500  
 War, theories opposing, 529-533;  
     theories supporting, 533-534  
 "War Democrats," 346  
 "War Hawks," 9, 230, 314  
 War Powers, under Lincoln, 359-363  
 Warren, J., 585  
 Washington, B., 537  
 Washington, G., 8, 95, 123, 133, 134,  
     140, 142, 144, 147, 150, 178, 179,  
     180, 182, 185, 236, 264, 479  
 Washington Conference, 517, 526  
 "Washington Societies," 242  
 Webster, D., 110, 167, 210, 217, 241,  
     242, 265, 266, 281, 289, 293, 298;  
     political theory of, 306-308, 323,  
     328, 384, 408, 479  
 Webster, N., 111  
 Webster, P., 111, 139  
 Webster-Ashburton Treaty, 326  
 Weitling, W., 579  
 Wells, H. G., 22  
 Western Federation of Miners, 587  
 Westward expansion, 218-222  
 Wheaton, H., 321  
 Whigs, in American colonies, 63  
 Whig Party, 224, 247-248, 257, 343  
 Whiskey Insurrection, 147, 179-180  
 White, A. D., 609  
 White, H., 484  
 Whitman, W., 549, 592  
 Whittier, W. G., 290  
 Wigmore, J. H., 565  
 Willoughby, W. W., political theory  
     of, 405-406  
 William of Ockam, 44  
 Williams, R., 52, 55, 68  
 Wilmot Proviso, 287  
 Wilson, J., 89, 125, 134, 140; political  
     theory of, 164-168, 195, 201, 204,  
     206, 207, 212, 456  
 Wilson, W., 9, 13; political theory of,  
     405-406, 411; policies of, 466-469,  
     487, 502, 503, 505, 507, 508, 512,  
     513; foreign policy of, 518-526, 552,  
     554, 610  
 Wilson Tariff Act, 425  
 Windom Report, 413  
 Winsor, J., 614  
 "Wisconsin idea," 453  
 Wise, J., 58, 68, 70-71  
 Winterbotham, W., 153  
 Winthrop, J., 35, 37, 62  
 Wollstonecraft, M., 538  
 Women, importance of, in public life,  
     16-17  
 Women's Suffrage, 242, 537-540  
 Wood, L., 474  
 Woodbury, L., 257  
 Woolsey, T. D., political theory of,  
     401-402, 570, 574  
 Working Men's Party, 274  
 World Court, 20, 478, 525  
 World War, 10, 517-527  
 Wright, F., 577  
 Wyclif, J., 44  
 Wythe, G., 101  
  
 X, Y, Z affair, 18









